

Department of Business and Professional Regulation

Division of Certified Public Accounting

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CHAPTER 455

BUSINESS AND PROFESSIONAL REGULATION: GENERAL PROVISIONS

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455.01 Definitions.--As used in this chapter, the term:

- (1) "Board" means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.
- (2) "Consumer member" means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.
- (3) "Department" means the Department of Business and Professional Regulation.
- (4) "License" means any permit, registration, certificate, or license issued by the department.
- (5) "Licensee" means any person issued a permit, registration, certificate, or license by the department.
- (6) "Profession" means any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

History.--s. 1, ch. 21885, 1943; s. 1, ch. 28215, 1953; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 27, ch. 67-248; s. 3, ch. 67-409; s. 1, ch. 67-596; s. 121, ch. 71-355; s. 122, ch. 73-333; s. 5, ch. 79-36; s. 123, ch. 79-164; s. 2, ch. 84-70; s. 9, ch. 91-220; s. 4, ch. 92-149; s. 5, ch. 93-220; s. 1, ch. 96-291; s. 3, ch. 97-261; s. 109, ch. 2000-153; s. 23, ch. 2000-160.

Note.--Former s. 485.01.

455.017 Applicability of this chapter.--The provisions of this chapter apply only to the regulation by the department of professions.

History.--s. 60, ch. 94-218.

455.02 Members of Armed Forces in good standing with administrative boards.--

- (1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any administrative board of the state and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty as a member of the Armed Forces of the United States, provided he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.

- (2) The boards listed in s. 20.165 shall promulgate rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions, but only in cases of absence from the state because of their spouses' duties with the Armed Forces.

History.--s. 2, ch. 21885, 1943; s. 5, ch. 79-36; s. 95, ch. 83-329; s. 1, ch. 84-15; s. 71, ch. 85-81; s. 6, ch. 93-220; s. 186, ch. 97-103.

Note.--Former s. 485.02.

455.10 Restriction on requirement of citizenship.--No person shall be disqualified from practicing an occupation or profession regulated by the state solely because he or she is not a United States citizen.

History.--ss. 1, 2, 3, ch. 72-125; s. 1, ch. 74-37; s. 1, ch. 77-174; s. 5, ch. 79-36; s. 187, ch. 97-103.

Note.--Former s. 455.012.

455.11 Qualification of immigrants for examination to practice a licensed profession or occupation.--

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that said reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering same shall be borne by said applicants.

(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.--ss. 1, 3, ch. 77-255; s. 5, ch. 79-36; s. 194, ch. 79-400; s. 5, ch. 92-149; s. 61, ch. 94-218.

Note.--Former s. 455.016.

455.116 Regulation trust funds.--The following trust funds shall be placed in the department:

- (1) Administrative Trust Fund.
- (2) Alcoholic Beverage and Tobacco Trust Fund.
- (3) Cigarette Tax Collection Trust Fund.
- (4) Hotel and Restaurant Trust Fund.
- (5) Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.
- (6) Pari-mutuel Wagering Trust Fund.
- (7) Professional Regulation Trust Fund.

History.--s. 8, ch. 93-220; s. 44, ch. 96-418.

455.117 Sale of services and information by department.--The department may provide, directly or by contract, services and information to other levels of government and private entities.

History.--s. 9, ch. 93-220.

455.201 Professions and occupations regulated by department; legislative intent; requirements.--

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase regulation of already regulated professions or occupations to determine their effect on job creation or retention and employment opportunities.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

History.--s. 1, ch. 76-28; s. 5, ch. 79-36; s. 122, ch. 79-164; s. 3, ch. 82-1; s. 79, ch. 83-218; s. 36, ch. 92-33; s. 6, ch. 92-149; s. 20, ch. 93-129; s. 62, ch. 94-218; s. 134, ch. 99-251.

Note.--Former s. 455.001.

455.203 Department; powers and duties.--The department, for the boards under its jurisdiction, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(6) Establish by rule procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

¹(9) Allow applicants for new or renewal licenses and current licensees to be screened by the Title IV-D child support agency pursuant to s. 409.2598 to assure compliance with a support obligation. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation, as defined in s. 409.2554. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

History.--s. 5, ch. 79-36; s. 27, ch. 81-302; s. 7, ch. 83-329; s. 15, ch. 86-285; s. 15, ch. 89-162; s. 1, ch. 90-228; s. 37, ch. 92-33; s. 7, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 93-208; s. 10, ch. 93-262; ss. 63, 64, ch. 94-218; s. 206, ch. 96-410; s. 4, ch. 97-261; s. 117, ch. 98-200; s. 24, ch. 2000-160; s. 51, ch. 2001-158; s. 38, ch. 2005-39.

¹**Note.**--Section 38, ch. 2005-39, amended subsection (9), effective July 1, 2006, to read:

(9) Work cooperatively with the Department of Revenue to implement an automated method for periodically disclosing information relating to current licensees to the Department of Revenue. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, subpoena, order to show cause, or written agreement entered into by the licensee with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue that the licensee has complied with the terms of the support order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

455.2035 Rulemaking authority for professions not under a board.--The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the regulatory requirements of any profession within the department's jurisdiction which does not have a statutorily authorized regulatory board.

History.--s. 136, ch. 99-251.

455.204 Long-range policy planning; plans, reports, and recommendations.--To facilitate efficient and cost-effective regulation, the department and the board, where appropriate, shall develop and implement a long-range policy planning and monitoring process to include recommendations specific to each profession. Such process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered shall not be less than 5 years. The department, with input from the boards, shall develop the long-range plan and must obtain the approval of the secretary. The department shall monitor compliance with the approved long-range plan and, with input from the boards, shall annually update the plans for approval by the secretary. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

- (1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.
- (2) How and why the various professions are regulated.
- (3) Whether there is a need to continue regulation, and to what degree.
- (4) Whether or not consumer protection is adequate, and how it can be improved.
- (5) Whether there is consistency between the various practice acts.
- (6) Whether unlicensed activity is adequately enforced.

Such plans should include conclusions and recommendations on these and other issues as appropriate. Such plans shall be provided to the Governor and the Legislature by November 1 of each year.

History.--s. 8, ch. 92-149.

455.205 Contacting boards through department.--Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee or at any regional office of the department.

History.--s. 30, ch. 69-106; s. 2, ch. 77-115; s. 5, ch. 79-36; s. 38, ch. 92-33; s. 23, ch. 93-129; ss. 65, 66, ch. 94-218; s. 5, ch. 97-261.

Note.--Former s. 455.004.

455.207 Boards; organization; meetings; compensation and travel expenses.--

- (1) Each board within the department shall comply with the provisions of this section.
- (2) The board shall annually elect from among its number a chairperson and vice chairperson.
- (3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.
- (4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated \$50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the secretary.
- (5) When two or more boards have differences between them, the boards may elect to, or the secretary may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the secretary may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is

challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.
History.--s. 5, ch. 79-36; s. 28, ch. 81-302; s. 8, ch. 83-329; s. 72, ch. 85-81; s. 4, ch. 88-392; s. 39, ch. 92-33; s. 9, ch. 92-149; s. 23, ch. 93-129; s. 3, ch. 94-119; s. 6, ch. 97-261; s. 25, ch. 2000-160.

455.208 Publication of information.--The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

History.--s. 5, ch. 88-392; s. 40, ch. 92-33; s. 10, ch. 92-149; s. 23, ch. 93-129; s. 67, ch. 94-218; s. 7, ch. 97-261.

455.209 Accountability and liability of board members.--

(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform the member's official duties, or commission of a felony.

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department may defend the member's company or business in any action against the company or business if the department determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department may employ or utilize the legal services of the Department of Legal Affairs or outside counsel retained pursuant to s. 287.059. Fees and costs of providing legal services provided under this subsection shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219.

History.--s. 5, ch. 79-36; ss. 13, 15, 25, 30, 34, 57, 62, ch. 80-406; s. 6, ch. 88-392; s. 2, ch. 90-228; s. 41, ch. 92-33; s. 11, ch. 92-149; s. 23, ch. 93-129; s. 68, ch. 94-218; s. 188, ch. 97-103; s. 8, ch. 97-261; s. 1, ch. 98-166; s. 151, ch. 99-251.

455.211 Board rules; final agency action; challenges.--

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

- (a) Does not protect the public from any significant and discernible harm or damages;
- (b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or
- (c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 455.207(5).

(4) Any proposed board rule that has not been modified to remove proposed committee objections of the Administrative Procedures Committee must receive approval from the department prior to filing the rule with the Department of State for final adoption. The department may repeal any rule enacted by the board

which has taken effect without having met proposed committee objections of the Administrative Procedures Committee.

History.--s. 5, ch. 79-36; s. 42, ch. 92-33; s. 12, ch. 92-149; s. 23, ch. 93-129; s. 69, ch. 94-218; s. 207, ch. 96-410; s. 9, ch. 97-261; s. 5, ch. 2000-356.

455.212 Education; substituting demonstration of competency for clock-hour requirements.--Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.--s. 63, ch. 92-136; s. 30, ch. 92-321.

455.2121 Education; accreditation.--Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

History.--s. 4, ch. 94-119.

455.2123 Continuing education.--A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements.

History.--s. 137, ch. 99-251.

455.2124 Proration of or not requiring continuing education.--A board, or the department when there is no board, may:

(1) Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(2) Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

History.--s. 138, ch. 99-251.

455.2125 Consultation with postsecondary education boards prior to adoption of changes to training requirements.--Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the ¹Board of Regents, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

History.--s. 23, ch. 95-243; s. 34, ch. 98-421; s. 71, ch. 2004-5; s. 13, ch. 2004-41.

¹**Note.**--Abolished by s. 3, ch. 2001-170.

455.213 General licensing provisions.--

(1) Any person desiring to be licensed shall apply to the department in writing. The application for licensure shall be made on a form prepared and furnished by the department and include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the contents of any documents to be submitted for initial licensure and licensure renewal. Such documents may contain information including, as appropriate: demographics, education, work history,

personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, signature notarization, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, and ongoing education monitoring. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization- or vendor-related fees associated with the examination may be paid directly to the organization or vendor.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

(3) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.

(4) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge shall submit his or her recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for a license may appeal the final order of the board in accordance with the provisions of chapter 120.

(5) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(6) Any board that currently requires continuing education for renewal of a license shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department when there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department when there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department when there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the boards or the department when there is no board.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(9) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section.

Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement and use by the Department of Business and Professional Regulation, and as otherwise provided by law.

(10) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, a fingerprint card containing the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the Florida Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for registration, certification, or licensure.

(11) Any submission required to be in writing may be made by electronic means.

History.--s. 5, ch. 79-36; s. 29, ch. 81-302; s. 9, ch. 83-329; s. 7, ch. 84-203; s. 30, ch. 85-175; s. 3, ch. 86-287; s. 1, ch. 89-162; s. 67, ch. 89-374; s. 1, ch. 91-137; s. 10, ch. 91-220; s. 43, ch. 92-33; ss. 13, 76, ch. 92-149; s. 23, ch. 93-129; ss. 1, 4, ch. 96-309; s. 208, ch. 96-410; s. 1078, ch. 97-103; s. 63, ch. 97-170; s. 1, ch. 97-228; s. 10, ch. 97-261; s. 53, ch. 97-278; s. 2, ch. 98-166; s. 37, ch. 98-397; s. 139, ch. 99-251; s. 26, ch. 2000-160; s. 1, ch. 2001-269; s. 9, ch. 2001-278.

455.214 Limited licenses.--

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of his or her profession, the application and all licensure fees shall be waived.

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this chapter or the applicable practice act.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.

(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.

(7) This section does not apply to chapter 458 or chapter 459.

History.--s. 14, ch. 92-149; s. 189, ch. 97-103; s. 11, ch. 97-261; s. 27, ch. 2000-160.

455.217 Examinations.--This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

- (1) The Division of Technology, Licensure, and Testing of the Department of Business and Professional Regulation shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.
- (a) The department, acting in conjunction with the Division of Technology, Licensure, and Testing and the Division of Real Estate, as appropriate, shall ensure that examinations adequately and reliably measure an applicant's ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board or department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use professional testing services for the development, preparation, and evaluation of examinations, when such services are available and approved by the board.
- (b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board or the department when there is no board, shall by rule specify the general areas of competency to be covered by the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection does not apply to national examinations approved and administered pursuant to paragraph (d).
- (c) If a practical examination is deemed to be necessary, rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.
- (d) A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or nonprofit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department, and approved by the board. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph. Any licensing or certification examination that is not developed or administered by the department in-house or provided as a national examination shall be competitively bid.
- (e) The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.2175 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.
- (f) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this chapter. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration of that profession's examination. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the

examination for which he or she failed to achieve a passing grade, if he or she successfully passes that portion within a reasonable time of his or her passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board or the department when there is no board, shall make rules providing for reexamination of any applicants who fail an examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if the applicant successfully passes that portion within a reasonable time, as determined by rule of the board, or department when there is no board, of his or her passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph (1)(d), the department shall provide procedures for applicants who have taken and failed an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of his or her examination grades.

(4) For each examination developed or administered by the department or a contracted vendor, an accurate record of each applicant's examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to paragraph (1)(d).

(5) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3).

(6) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant's native language. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English or Spanish. Requests for translated examinations, except for those in Spanish, must be on file in the board office, or with the department when there is no board, at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English or Spanish, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7) In addition to meeting any other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department, if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department.

History.--s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 286, ch. 81-259; s. 30, ch. 81-302; s. 4, ch. 82-1; s. 39, ch. 82-179; s. 80, ch. 83-218; s. 10, ch. 83-329; s. 1, ch. 88-49; s. 2, ch. 89-162; s. 2, ch. 91-137; s. 1, ch. 91-140; s. 11, ch. 91-220; s. 15, ch. 92-149; s. 5, ch. 94-119; s. 70, ch. 94-218; s. 303, ch. 96-406; s. 1080, ch. 97-103; s. 2, ch. 97-228; s. 12, ch. 97-261; s. 18, ch. 99-7; s. 28, ch. 2000-160; s. 6, ch. 2000-356.

Note.--Former s. 455.007(2).

455.2171 Use of professional testing services.--Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department when there is no board.

History.--s. 6, ch. 94-119.

455.2175 Penalty for theft or reproduction of an examination.--In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is

reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 3, ch. 90-228; s. 3, ch. 91-137; s. 47, ch. 92-33; s. 23, ch. 93-129; s. 71, ch. 94-218; s. 13, ch. 97-261.

455.2177 Monitoring of compliance with continuing education requirements.--

(1) The department shall establish a system to monitor licensee compliance with applicable continuing education requirements and to determine each licensee's continuing education status. As used in this section, the term "monitor" means the act of determining, for each licensee, whether the licensee was in full compliance with applicable continuing education requirements as of the time of the licensee's license renewal.

(2) The department may refuse renewal of a licensee's license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or boards from imposing additional penalties pursuant to the applicable practice act or rules adopted pursuant thereto.

(3) The department may waive the continuing education monitoring requirements of this section for any profession that demonstrates to the department that the monitoring system places an undue burden on the profession. The department shall waive the continuing education monitoring requirements of this section for any profession that has a program in place which measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance.

(4) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.--s. 157, ch. 99-251; s. 17, ch. 2001-278; s. 43, ch. 2002-207; s. 2, ch. 2004-292; s. 82, ch. 2005-2.

455.2178 Continuing education providers.--

(1) Each continuing education provider shall provide to the department such information regarding the continuing education status of licensees as the department determines is necessary to carry out its duties under s. 455.2177, in an electronic format determined by the department. After a licensee's completion of a course, the information must be submitted to the department electronically no later than 30 calendar days thereafter or prior to the licensee's renewal date, whichever occurs sooner. The foregoing applies only if the profession has not been granted a waiver from the monitoring requirements under s. 455.2177. Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee.

(2) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(3) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section and s. 455.2177 as the department deems necessary or appropriate.

(4) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 455.225.

(5) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board of any profession subject to this section, or the department if there is no board, shall, by rule, adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule shall be to ensure that all records and information necessary to carry out the requirements of this section and s. 455.2177 are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(6) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.--s. 158, ch. 99-251; s. 3, ch. 2004-292.

455.2179 Continuing education provider and course approval; cease and desist orders.--

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve providers of the continuing education. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time

limitation may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act.

(2) The board, or the department if there is no board, shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board, or the department if there is no board, if the board, or the department if there is no board, determines that the person or entity failed to provide appropriate continuing education services that conform to approved course material. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 455.225.

(3) Each board authorized to approve continuing education providers, or the department if there is no board, may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of providership of such courses. The Florida Real Estate Commission, authorized under the provisions of chapter 475 to approve precicensure, precertification, and postlicensure education providers, may establish, by rule, an application fee not to exceed \$250 for anyone seeking approval to offer precicensure, precertification, or postlicensure education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section and ss. 455.2177 and 455.2178.

(4) The department and each affected board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

History.--s. 159, ch. 99-251; s. 7, ch. 2000-356; s. 4, ch. 2004-292.

455.218 Foreign-trained professionals; special examination and license provisions.--

(1) When not otherwise provided by law, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this chapter or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

History.--s. 1, ch. 86-90; s. 7, ch. 88-205; s. 7, ch. 88-392; s. 48, ch. 92-33; s. 16, ch. 92-149; s. 23, ch. 93-129; s. 312, ch. 94-119; s. 72, ch. 94-218; s. 14, ch. 97-261; s. 3, ch. 98-166; s. 29, ch. 2000-160.

455.2185 Exemption for certain out-of-state or foreign professionals; limited practice permitted.--

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

- (a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
- (b) Engages in the active practice of that profession outside the state.
- (c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed veterinary facility without the approval of that facility.

History.--s. 1, ch. 94-96; s. 15, ch. 97-261; s. 30, ch. 2000-160.

455.219 Fees; receipts; disposition; periodic management reports.--

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida State Boxing Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of such professions as required in this section. No more than one such assessment may be made in any 4-year period without specific legislative authorization.

(3) All moneys collected by the department from fees or fines or from costs awarded to the department by a court shall be paid into the Professional Regulation Trust Fund, which fund is created in the department. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to professions regulated by the department and any board within the department. The department shall maintain separate accounts in the Professional Regulation Trust Fund for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses shall include, but not be limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department shall not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The department shall maintain adequate records to support its allocation of department expenses. The department shall provide any board with reasonable access to these records upon request. Each board shall be provided an annual report of revenue and direct and allocated expenses related to the operation of that profession. These reports and the department's adopted long-range plan shall be used by the board to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared pursuant to s. 455.2285.

(4) A condensed management report of budgets, finances, performance statistics, and recommendations shall be provided to each board at least once a quarter. The department shall identify and include in such presentations any changes, or projected changes, made to the board's budget since the last presentation.

(5) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed \$25 before issuance of the duplicate license.

(6) The department or the appropriate board shall charge a fee not to exceed \$25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board shall assess a fee for duplication of a public record as provided in s. 119.07(4).

History.--s. 5, ch. 79-36; s. 287, ch. 81-259; s. 2, ch. 84-271; s. 82, ch. 90-132; s. 4, ch. 90-228; s. 4, ch. 91-137; s. 17, ch. 92-149; s. 73, ch. 94-218; s. 8, ch. 2000-356; s. 44, ch. 2004-335.

455.221 Legal and investigative services.--

(1) The department shall provide board counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel pursuant to s. 287.059, or by providing department staff counsel. The primary responsibility of board counsel shall be to represent the interests of the citizens of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Fees and costs of such counsel shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The Department of Business and Professional Regulation may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or used by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

History.--s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 288, ch. 81-259; s. 31, ch. 81-302; s. 51, ch. 92-33; s. 23, ch. 93-129; s. 7, ch. 94-119; ss. 74, 75, ch. 94-218; s. 16, ch. 97-261; s. 152, ch. 99-251.

Note.--Former s. 455.007(3), (4).

455.2226 Funeral directors and embalmers; instruction on HIV and AIDS.--

- (1) The Board of Funeral Directors and Embalmers shall require each person licensed or certified under chapter 497 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.
- (2) Each such licensee or certificate holder shall submit confirmation of having completed said course, on a form as provided by the board, when submitting fees for each biennial renewal.
- (3) The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1). Each licensing board that requires a licensee to complete an educational course pursuant to this section may count the hours required for completion of the course included in the total continuing educational requirements as required by law.
- (4) Any person holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.
- (5) Failure to comply with the above requirements shall constitute grounds for disciplinary action under each respective licensing chapter and s. 455.227(1)(e). In addition to discipline by the board, the licensee shall be required to complete said course.
- (6) The board shall require as a condition of granting a license under the chapters specified in subsection (1) that an applicant making initial application for licensure complete an educational course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.
- (7) The board shall have the authority to adopt rules to carry out the provisions of this section.
- (8) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

History.--s. 4, ch. 88-380; s. 10, ch. 89-350; ss. 71, 72, ch. 91-297; s. 18, ch. 92-149; s. 28, ch. 95-144; s. 17, ch. 97-261; s. 144, ch. 2004-301.

455.2228 Barbers and cosmetologists; instruction on HIV and AIDS.--

- (1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 476 or chapter 477 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.
- (2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.
- (3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).
- (4) As of December 31, 1992, the board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.
- (5) The board, or the department where there is no board, shall have the authority to adopt rules to carry out the provisions of this section.
- (6) The board, or the department where there is no board, shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

(7) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course, or one department-approved course where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

History.--s. 11, ch. 89-350; ss. 73, 74, ch. 91-297; s. 16, ch. 95-388; s. 18, ch. 97-261.

455.223 Power to administer oaths, take depositions, and issue subpoenas.--For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

History.--s. 5, ch. 79-36; s. 32, ch. 81-302; s. 4, ch. 86-90; s. 5, ch. 91-137; s. 52, ch. 92-33; s. 23, ch. 93-129; s. 77, ch. 94-218; s. 210, ch. 96-410; s. 19, ch. 97-261.

455.2235 Mediation.--

(1) Notwithstanding the provisions of s. 455.225, the board, or the department when there is no board, shall adopt rules to designate which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 455.225.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 455.225. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 455.225.

(4) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.

(5) If any board fails to adopt rules designating which violations are appropriate for resolution by mediation by January 1, 1995, the department shall have exclusive authority to, and shall, adopt rules to designate the violations which are appropriate for mediation. Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

History.--s. 19, ch. 92-149; s. 8, ch. 94-119.

455.224 Authority to issue citations.--

(1) Notwithstanding s. 455.225, the board or the department shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department when there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

- (3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department rule, as part of the penalty levied pursuant to the citation.
- (4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.
- (5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.
- (6) Within its jurisdiction, the department has exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. A board created on or after January 1, 1992, has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.
- History.**--s. 6, ch. 91-137; s. 53, ch. 92-33; s. 20, ch. 92-149; s. 23, ch. 93-129; s. 313, ch. 94-119; s. 78, ch. 94-218; s. 20, ch. 97-261; s. 161, ch. 99-251.

455.225 Disciplinary proceedings.--Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1)(a) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board.

(b) When an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department

dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3)(a) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department if there is no board, shall establish by rule those violations which are minor violations under this provision. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(b) The department may issue a notice of noncompliance for an initial offense of a minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The secretary may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department, for disciplinary cases under its jurisdiction, must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Professional Regulation Trust Fund. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative

law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of Business and Professional Regulation or his or her designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.--s. 1, ch. 74-57; s. 5, ch. 79-36; s. 289, ch. 81-259; s. 33, ch. 81-302; s. 12, ch. 83-329; s. 8, ch. 84-203; s. 3, ch. 85-311; s. 5, ch. 86-90; s. 8, ch. 88-1; s. 5, ch. 88-277; s. 1, ch. 88-279; s. 3, ch. 89-162; s. 1, ch. 90-44; s. 5, ch. 90-228; s. 7, ch. 91-137; s. 2, ch. 91-140; s. 54, ch. 92-33; s. 21, ch. 92-149; s. 132, ch. 92-279; s. 55, ch. 92-326; s. 23, ch. 93-129; s. 314, ch. 94-119; s. 79, ch. 94-218; s. 305, ch. 96-406; s. 211, ch. 96-410; s. 1082, ch. 97-103; s. 2, ch. 97-209; s. 3, ch. 97-228; s. 142, ch. 97-237; s. 21, ch. 97-261; s. 4, ch. 97-264; s. 18, ch. 97-273; s. 4, ch. 98-166; s. 31, ch. 2000-160.

Note.--Former s. 455.013.

455.2255 Classification of disciplinary actions.--

(1) A licensee may petition the department to review a disciplinary incident to determine whether the specific violation meets the standard of a minor violation as set forth in s. 455.225(3). If the circumstances of the violation meet that standard and 2 years have passed since the issuance of a final order imposing discipline, the department shall reclassify that violation as inactive if the licensee has not been disciplined for any subsequent minor violation of the same nature. After the department has reclassified the violation as inactive, it is no longer considered to be part of the licensee's disciplinary record, and the licensee may lawfully deny or fail to acknowledge the incident as a disciplinary action.

(2) The department may establish a schedule classifying violations according to the severity of the violation. After the expiration of set periods of time, the department may provide for such disciplinary records to become inactive, according to their classification. After the disciplinary record has become inactive, the department may clear the violation from the disciplinary record and the subject person or business may lawfully deny or fail to acknowledge such disciplinary actions. The department may adopt rules to implement this subsection.

(3) Notwithstanding s. 455.017, this section applies to the disciplinary records of all persons or businesses licensed by the department.

History.--s. 143, ch. 99-251.

455.227 Grounds for discipline; penalties; enforcement.--

- (1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
 - (a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
 - (b) Intentionally violating any rule adopted by the board or the department, as appropriate.
 - (c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.
 - (d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to s. 501.122(2) governing the registration of such devices.
 - (e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.
 - (f) Having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.
 - (g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.
 - (h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.
 - (i) Failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.
 - (j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.
 - (k) Failing to perform any statutory or legal obligation placed upon a licensee.
 - (l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.
 - (m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
 - (n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.
 - (o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.
 - (p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.
 - (q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
 - (r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
 - (s) Failing to comply with the educational course requirements for domestic violence.
- (2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:
 - (a) Refusal to certify, or to certify with restrictions, an application for a license.
 - (b) Suspension or permanent revocation of a license.
 - (c) Restriction of practice.
 - (d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
 - (e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(3)(a) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

(b) In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.

(c) The department shall not issue or renew a license to any person against whom or business against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(5) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

History.--s. 5, ch. 79-36; s. 13, ch. 83-329; s. 5, ch. 88-380; s. 8, ch. 91-137; s. 55, ch. 92-33; s. 22, ch. 92-149; s. 23, ch. 93-129; s. 9, ch. 94-119; s. 80, ch. 94-218; s. 5, ch. 95-187; s. 22, ch. 97-261; s. 144, ch. 99-251; s. 32, ch. 2000-160.

455.2273 Disciplinary guidelines.--

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

History.--s. 2, ch. 86-90; s. 56, ch. 92-33; s. 23, ch. 92-149; s. 23, ch. 93-129; s. 81, ch. 94-218; s. 212, ch. 96-410; s. 23, ch. 97-261; s. 33, ch. 2000-160.

455.2275 Penalty for giving false information.--In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in

the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from either the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 31, ch. 85-175; s. 12, ch. 89-124; s. 9, ch. 91-137; s. 57, ch. 92-33; s. 24, ch. 92-149; s. 23, ch. 93-129; s. 82, ch. 94-218; s. 190, ch. 97-103; s. 24, ch. 97-261.

455.2277 Prosecution of criminal violations.--The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

History.--s. 25, ch. 92-149.

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.--

(1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding the provisions of s. 455.225, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.

(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.2281 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.

(5) The provisions of this section apply only to the provisions of s. 455.217 and the professional practice acts administered by the department.

History.--s. 3, ch. 84-271; s. 6, ch. 90-228; s. 58, ch. 92-33; s. 26, ch. 92-149; s. 23, ch. 93-129; s. 11, ch. 94-119; ss. 83, 84, ch. 94-218; s. 213, ch. 96-410; s. 25, ch. 97-261; s. 34, ch. 2000-160.

455.2281 Unlicensed activities; fees; disposition.--In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each renewal thereof, a special fee of \$5 per licensee. Such fee shall be in addition to all other fees collected from each licensee and shall fund efforts to combat unlicensed activity. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and shall not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report provided for in s. 455.219. The department shall not charge the account of any profession for the costs incurred on behalf of any other profession. For an unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession.

History.--s. 27, ch. 92-149; s. 12, ch. 94-119; s. 160, ch. 99-251; s. 2, ch. 2001-269; s. 5, ch. 2004-292.

455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.--The department is directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

- (1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.
- (2) The number of complaints received and investigated.
- (3) The number of findings of probable cause made.
- (4) The number of findings of no probable cause made.
- (5) The number of administrative complaints filed.
- (6) The disposition of all administrative complaints.
- (7) A description of disciplinary actions taken.
- (8) A description of any effort by the department, for any disciplinary cases under its jurisdiction, to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.
- (9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.2273.
- (10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

History.--s. 4, ch. 84-271; s. 3, ch. 86-90; s. 7, ch. 90-228; s. 59, ch. 92-33; s. 28, ch. 92-149; s. 23, ch. 93-129; ss. 85, 86, ch. 94-218; s. 143, ch. 97-237; s. 26, ch. 97-261; s. 5, ch. 97-264; s. 19, ch. 97-273; s. 5, ch. 98-166.

455.2286 Automated information system.--By November 1, 2001, the department shall implement an automated information system for all certificate holders and registrants under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. The system shall provide instant notification to local building departments and other interested parties regarding the status of the certification or registration. The

provision of such information shall consist, at a minimum, of an indication of whether the certification or registration is active, of any current failure to meet the terms of any final action by a licensing authority, of any ongoing disciplinary cases that are subject to public disclosure, whether there are any outstanding fines, and of the reporting of any material violations pursuant to s. 553.781. The system shall also retain information developed by the department and local governments on individuals found to be practicing or contracting without holding the applicable license, certification, or registration required by law. The system may be Internet-based.

History.--s. 6, ch. 98-287; s. 31, ch. 2000-141.

455.229 Public inspection of information required from applicants; exceptions; examination hearing.--

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department.

(2) The department shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

History.--s. 5, ch. 79-36; s. 1, ch. 88-392; s. 8, ch. 90-228; s. 10, ch. 91-137; s. 3, ch. 91-140; s. 60, ch. 92-33; s. 29, ch. 92-149; s. 23, ch. 93-129; s. 13, ch. 94-119; s. 87, ch. 94-218; ss. 306, 307, ch. 96-406; s. 214, ch. 96-410; s. 27, ch. 97-261.

455.232 Disclosure of confidential information.--

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

History.--s. 2, ch. 85-311; s. 5, ch. 91-140; s. 83, ch. 91-224; s. 61, ch. 92-33; s. 30, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 94-119; s. 88, ch. 94-218; s. 28, ch. 97-261.

455.24 Advertisement by a veterinarian of free or discounted services; required statement.--In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a person licensed under chapter 474, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of

which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

History.--s. 1, ch. 84-161; s. 1, ch. 85-7; s. 6, ch. 86-90; s. 13, ch. 89-124; s. 31, ch. 92-149; s. 29, ch. 97-261.

455.242 Veterinarians; disposition of records of deceased practitioners or practitioners relocating or terminating practice.--Each board created under the provisions of chapter 474 shall provide by rule for the disposition, under that chapter, of the records that are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

History.--s. 1, ch. 79-302; s. 11, ch. 88-1; s. 11, ch. 88-392; s. 15, ch. 89-124; s. 16, ch. 91-137; s. 34, ch. 92-149; s. 30, ch. 97-261.

455.243 Authority to inspect.--Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered, for the purpose of determining if any of the provisions of this chapter or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

History.--s. 2, ch. 82-22; s. 63, ch. 92-33; s. 35, ch. 92-149; s. 23, ch. 93-129; s. 92, ch. 94-218; s. 31, ch. 97-261; s. 35, ch. 2000-160.

455.245 Veterinarians; immediate suspension of license.--The department shall issue an emergency order suspending the license of any person licensed under chapter 474 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

History.--s. 1, ch. 86-91; s. 12, ch. 88-1; s. 16, ch. 89-124; s. 64, ch. 92-33; s. 36, ch. 92-149; s. 23, ch. 93-129; s. 93, ch. 94-218; s. 192, ch. 97-103; s. 32, ch. 97-261.

455.271 Inactive and delinquent status.--

(1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this section and s. 455.227, and the board, or the department when there is no board, may impose discipline on the licensee.

(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status. However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.

(3) Each board, or the department when there is no board, shall, by rule, impose a fee for an inactive status license which is no greater than the fee for an active status license.

(4) An inactive status licensee may change to active status at any time, provided the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the board, or the department when there is no board, and meets all continuing education requirements as specified in this section.

(5) A licensee shall apply with a complete application, as defined by rule of the board, or the department when there is no board, to renew an active or inactive status license before the license expires. Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.

(6)(a) A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department.

(b) Notwithstanding the provisions of the professional practice acts administered by the department, the board, or the department if there is no board, may, at its discretion, reinstate the license of an individual

whose license has become void if the board or department, as applicable, determines that the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual must apply to the board, or the department if there is no board, for reinstatement in a manner prescribed by rules of the board or the department, as applicable, and shall pay an applicable fee in an amount determined by rule. The board, or the department if there is no board, shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

(7) Each board, or the department when there is no board, shall, by rule, impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department when there is no board, shall, by rule, impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department when there is no board, may, by rule, impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) Before reactivation, an inactive or delinquent licensee shall meet the same continuing education requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent.

(11) The status or a change in status of a licensee shall not alter in any way the board's, or the department's when there is no board, right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to chapter 310 or chapter 475.

History.--s. 14, ch. 94-119; s. 1, ch. 2005-249.

455.273 Renewal and cancellation notices.--

(1) At least 90 days before the end of a licensure cycle, the Department of Business and Professional Regulation shall:

(a) Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record with the department.

(b) Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record with the department.

(2) Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the board or the department when there is no board.

History.--s. 15, ch. 94-119.

455.275 Address of record.--

(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board.

(2) Notwithstanding any other provision of law, service by regular mail to a licensee's last known address of record with the department constitutes adequate and sufficient notice to the licensee for any official

communication to the licensee by the board or the department except when other service is required pursuant to s. 455.225.

History.--s. 16, ch. 94-119.

455.32 Management Privatization Act.--

(1) This section shall be known by the popular name the "Management Privatization Act."

(2) The purpose of this section is to create a model for contracting with nonprofit corporations to provide services for the regulation of Florida's professionals which will ensure a consistent, effective application of regulatory provisions and appropriate budgetary oversight to achieve the most efficient use of public funds. Nonprofit corporations may be established pursuant to this section to provide administrative, examination, licensing, investigative, and prosecutorial services to any board created within the department pursuant to chapter 20 in accordance with the provisions of this chapter and the applicable practice act. No additional entities may be created to provide these services.

(3) As used in this section, the term:

(a) "Board" means any board, commission, or council created within the department pursuant to chapter 20.

(b) "Corporation" means any nonprofit corporation with which the department contracts pursuant to subsection (14).

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Contract manager" means an employee of the department who serves as a liaison between the department, the board, and the corporation and is responsible for ensuring that the police powers of the state are not exercised by the corporation, while also serving as the contract monitor.

(e) "Business case" means a needs assessment, financial feasibility study, and corporate financial model as specified in paragraph (4).

(f) "Performance standards and measurable outcomes" shall include, but not be limited to, timeliness and qualitative criteria for the activities specified in paragraph (6)(o).

(g) "Secretary" means the Secretary of Business and Professional Regulation.

(4) Based upon the request of any board, the department is authorized to establish and contract with a nonprofit corporation to provide administrative, examination, licensing, investigative, and prosecutorial services to that board, in accordance with the provisions of this chapter and the applicable practice act and as specified in a contract between the department and the corporation. The privatization request must contain a business case that includes a needs assessment and financial feasibility study performed by the board or an entity commissioned by a majority vote of the board. The needs assessment must contain specific performance standards and measurable outcomes and an evaluation of the department's current and projected performance in regard to those standards. The feasibility study must include the financial status of the board for the current fiscal year and the next 2 fiscal years. A financial model for the corporation must also be developed which includes projected costs and expenses for the first 2 years of operation and specific performance standards and measurable outcomes. The business case must be approved by the Executive Office of the Governor and the Legislative Budget Commission prior to the establishment of the nonprofit corporation.

(5) Any such corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the employees of the corporation are subject to the provisions of s. 112.061 and part III of chapter 112. The provisions of s. 768.28 apply to each such corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state but which is not an agency within the meaning of s. 20.03(11).

(6) Each corporation created to perform the functions provided in this section shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, examination, licensing, investigative, and prosecutorial services to the board, which services may include unlicensed activity investigations and prosecutions, in accordance with the provisions of this chapter, the applicable practice act, and the contract required by this section.

(c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the applicable board and in accordance with the contract required by this section.

(d) Be approved by the department to operate for the benefit of the board and in the best interest of the state.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

- (f) Be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund pursuant to s. 455.219.
- (g) Have a five-member board of directors, three of whom are to be appointed by the applicable board and must be licensees regulated by that board and two of whom are to be appointed by the secretary and are laypersons not regulated by that board. Initially, one member shall be appointed for 2 years, two members shall be appointed for 3 years, and two members shall be appointed for 4 years. One layperson shall be appointed to a 3-year term and one layperson shall be appointed to a 4-year term. Thereafter, all appointments shall be for 4-year terms. No new member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board of directors, and the vacancy shall be filled by a new appointment. No professional board member may also serve on the board of directors for the corporation.
- (h) Select its officers in accordance with its bylaws. The members of the board of directors may be removed by the Governor, for the same reasons that a board member may be removed pursuant to s. 455.209.
- (i) Select the president of the corporation, who shall manage the operations of the corporation, subject to the approval of the board.
- (j) Use a portion of the interest derived from the corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.
- (k) Operate under a written contract with the department.
- (l) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The annual audit report must be submitted to the board, the department, and the Auditor General for review.
- (m) Provide for all employees and nonemployees charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.
- (n) Keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation and as requested by the Office of Program Policy Analysis and Government Accountability, the Auditor General, and the department.
- (o) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report describing all of the activities of the corporation for the previous fiscal year which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include:
1. The number of license renewals.
 2. The number of license applications received.
 3. The number of license applications approved and denied and the number of licenses issued.
 4. The average time required to issue a license.
 5. The number of examinations administered and the number of applicants who passed or failed the examination.
 6. The number of complaints received.
 7. The number of complaints determined to be legally sufficient.
 8. The number of complaints dismissed.
 9. The number of complaints determined to have probable cause.
 10. The number of administrative complaints issued and the status of the complaints.
 11. The number and nature of disciplinary actions taken by the board.
 12. All revenues received and all expenses incurred by the corporation during the preceding fiscal year in its performance of the duties under the contract.
 13. Any audit performed under paragraph (l), including financial reports and performance audits.
 14. The status of the compliance of the corporation with all performance-based program measures adopted by the board.
- (p) Meet or exceed the requirements of the business case developed by the board and approved by the Executive Office of the Governor and the Legislative Budget Commission.
- (7) The department shall annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. If the department determines the corporation is not compliant with the terms of the contract, including

performance standards and measurable outcomes, the contract may be terminated as provided in paragraph (14)(e).

(8) Nothing in this section shall limit the ability of the corporation to enter into contracts and perform all other acts incidental to those contracts which are necessary for the administration of its affairs and for the attainment of its purposes.

(9) The corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section.

(10) The corporation may exercise the authority assigned to the department or board under this section or the practice act of the relevant profession, pursuant to the contract, including but not limited to initiating disciplinary investigations for unlicensed practice of the relevant profession. The corporation may make a determination of legal sufficiency to begin the investigative process as provided in s. 455.225. However, the department or the board may not delegate to the corporation, by contract or otherwise, the authority for determining probable cause to pursue disciplinary action against a licensee, taking final action on license actions or on disciplinary cases, or adopting administrative rules under chapter 120.

(11) The department shall retain the independent authority to open, investigate, or prosecute any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 or may delegate concurrent authority for this purpose to the relevant professional board.

(12) The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(13) The board shall provide by rule for the procedures the corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the corporation and that there is an appropriate level of monitoring during the licensure examinations.

(14) The contract between the department and the corporation must be in compliance with this section and other applicable laws. The department shall retain responsibility for any duties it currently exercises relating to its police powers and any other current duty that is not provided to the corporation by contract or this section. The contract shall provide, at a minimum, that:

(a) The corporation provide administrative, examination, licensing, investigative, and prosecutorial services in accordance with the provisions of this section and the practice act of the relevant profession. The prosecutorial functions of the corporation shall include the authority to pursue investigations leading to unlicensed practice complaints, with the approval of and at the direction of the relevant professional board. With approval of the department and the board, the corporation may subcontract for specialized services for the investigation and prosecution of unlicensed activity pursuant to this chapter. The corporation shall be required to report all criminal matters, including unlicensed activity that constitutes a crime, to the state attorney for criminal prosecution pursuant to s. 455.2277.

(b) The articles of incorporation and bylaws of the corporation be approved by the department.

(c) The corporation submit an annual budget for approval by the department. If the department's appropriations request differs from the budget submitted by the corporation, the relevant professional board shall be permitted to authorize the inclusion in the appropriations request of a comment or statement of disagreement with the department's request.

(d) The corporation utilize the department's licensing and computerized database system.

(e) The corporation be annually certified by the department as complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. As part of the annual certification, the department shall make quarterly assessments regarding contract compliance by the corporation. The contract must also provide for methods and mechanisms for resolving any situation in which the assessment and certification process determines noncompliance, to include termination.

(f) The department employ a contract manager to actively monitor the activities of the corporation to ensure compliance with the contract, the provisions of this chapter, and the applicable practice act.

(g) The corporation be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

(h) If the corporation is no longer approved to operate for the board or the board ceases to exist, all moneys, records, data, and property held in trust by the corporation for the benefit of the board revert to the department, or the state if the department ceases to exist. All records and data in a computerized database

must be returned to the department in a form that is compatible with the computerized database of the department.

(i) The corporation secure and maintain, during the term of the contract and for all acts performed during the term of the contract, all liability insurance coverages in an amount to be approved by the department to defend, indemnify, and hold harmless the corporation and its officers and employees, the department and its employees, the board, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The corporation must provide proof of insurance to the department. The department and its employees, the board, and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the corporation. Violation of this paragraph shall be grounds for terminating the contract.

(j) The board, in lieu of the department, shall retain board counsel pursuant to the requirements of s. 455.221. The corporation, out of its allocated budget, shall pay all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsels.

(k) The corporation, out of its allocated budget, pay to the department all costs incurred by the corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

(l) The corporation, out of its allocated budget, pay to the department all direct and indirect costs associated with the monitoring of the contract, including salary and benefits, travel, and other related costs traditionally paid to state employees.

(m) The corporation comply with the performance standards and measurable outcomes developed by the board and the department. The performance standards and measurable outcomes must be specified within the contract.

(15) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217, 455.225, and 455.229 for records held by the department shall apply to records held by the corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The department and the board shall have access to all records of the corporation as necessary to exercise their authority to approve and supervise the contract. The Auditor General and the Office of Program Policy Analysis and Government Accountability shall have access to all records of the corporation as necessary to conduct financial and operational audits or examinations.

(16) If any provision of this section is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(a) The corporation shall cease and desist from exercising any powers and duties enumerated in this section.

(b) The department shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(c) The Executive Office of the Governor, notwithstanding chapter 216, may reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the board.

History.--s. 9, ch. 2000-356; s. 120, ch. 2001-266; s. 1, ch. 2004-292; s. 83, ch. 2005-2.

- 473.301 Purpose.
- 473.302 Definitions.
- 473.303 Board of Accountancy.
- 473.3035 Division of Certified Public Accounting.
- 473.304 Rules of board; powers and duties; legal services.
- 473.305 Fees.
- 473.306 Examinations.
- 473.3065 Certified Public Accountant Education Minority Assistance Program; advisory council.
- 473.308 Licensure.
- 473.309 Practice requirements for partnerships, corporations, and limited liability companies; business entities practicing public accounting.
- 473.3101 Licensure of sole proprietors, partnerships, corporations, limited liability companies, and other legal entities.
- 473.311 Renewal of license.
- 473.312 Continuing education.
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- 473.315 Independence, technical standards.
- 473.316 Communications between the accountant and client privileged.
- 473.318 Ownership of working papers.
- 473.319 Contingent fees.
- 473.3205 Commissions or referral fees.
- 473.321 Fictitious names.
- 473.322 Prohibitions; penalties.
- 473.323 Disciplinary proceedings.

473.301 Purpose.--The Legislature recognizes that there is a public need for independent and objective public accountants and that it is necessary to regulate the practice of public accounting to assure the minimum competence of practitioners and the accuracy of audit statements upon which the public relies and to protect the public from dishonest practitioners and, therefore, deems it necessary in the interest of public welfare to regulate the practice of public accountancy in this state.

History.--ss. 1, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429.

473.302 Definitions.--As used in this chapter, the term:

- (1) "Board" means the Board of Accountancy.
- (2) "Department" means the Department of Business and Professional Regulation.
- (3) "Division" means the Division of Certified Public Accounting.
- (4) "Certified public accountant" means a person who holds a license to practice public accounting in this state under the authority of this chapter.
- (5) "Firm" means any entity that is engaged in the practice of public accounting.
- (6) "Licensed audit firm" or "public accounting firm" means a firm licensed under s. 473.3101.
- (7) "Practice of," "practicing public accountancy," or "public accounting" means:
 - (a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
 - (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or
 - (c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board

shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

History.--ss. 2, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 1, ch. 89-87; s. 4, ch. 91-429; s. 3, ch. 92-292; s. 124, ch. 94-119; s. 155, ch. 94-218; s. 345, ch. 97-103; s. 1, ch. 98-340; s. 2, ch. 2000-154.

473.303 Board of Accountancy.--

(1) There is created in the department the Board of Accountancy. The board shall consist of nine members, seven of whom must be certified public accountants and two of whom must be laypersons who are not and have never been certified public accountants or members of any closely related profession or occupation. The members who are certified public accountants must have practiced public accounting on a substantially full-time basis for at least 5 years. At least one member of the board must be 60 years of age or older. Each member shall be appointed by the Governor, subject to confirmation by the Senate.

(2) The probable cause panel of the board may be composed of at least one board member who shall serve as chair and additional board members or past members of the board who are licensees in good standing. The past board members shall be appointed to the panel for a maximum of 2 years by the chair of the board with the approval of the secretary of the department.

History.--ss. 3, 25, ch. 79-202; ss. 2, 3, ch. 81-318; s. 52, ch. 83-329; ss. 1, 10, 11, ch. 85-9; s. 21, ch. 87-172; s. 23, ch. 91-137; s. 4, ch. 91-429; s. 156, ch. 94-218; s. 346, ch. 97-103; s. 2, ch. 98-340.

473.3035 Division of Certified Public Accounting.--

(1) All services concerning this chapter, including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in chapter 455 necessary to perform the duties of this chapter shall be provided by the Division of Certified Public Accounting. The board may, by majority vote, delegate a duty or duties to the appropriate division within the department. The board may, by majority vote, rescind any such delegation of duties at any time.

(2) The Division of Certified Public Accounting shall be funded by fees and assessments of the board, and funds collected by the board shall be used only to fund public accounting regulation. Funding for the Division of Certified Public Accounting shall be governed by ss. 215.37 and 455.219.

History.--s. 4, ch. 92-292; s. 114, ch. 98-166; s. 175, ch. 2000-160.

473.304 Rules of board; powers and duties; legal services.--

(1) The board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act. Every licensee shall be governed and controlled by this act and the rules adopted by the board.

(2) Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter.

(3) An attorney employed or used by the board may not both prosecute a matter and provide legal services to the board with respect to the same matter.

History.--ss. 3, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 5, ch. 92-292; s. 144, ch. 98-200.

473.305 Fees.--The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for the examination shall be established at an amount that covers the costs for the procurement or development, administration, grading, and review of the examination. The fee for the examination is refundable if the applicant is found to be ineligible to sit for the examination. The fee for initial application is nonrefundable, and the combined fees for application and examination may not exceed \$250 plus the actual per applicant cost to the department for purchase of the examination from the American Institute of Certified Public Accountants or a similar national organization. The biennial renewal fee may not exceed \$250. The board

may also establish, by rule, a reactivation fee, a late filing fee for the law and rules examination, and a delinquency fee not to exceed \$50 for continuing professional education reporting forms. The board shall establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants. Fees shall be based on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of certified public accountants.

History.--ss. 4, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 2, 10, 11, ch. 85-9; s. 1, ch. 87-221; s. 22, ch. 88-205; s. 48, ch. 89-162; s. 20, ch. 89-374; s. 4, ch. 91-429.

473.306 Examinations.--

(1) A person desiring to be licensed as a certified public accountant shall apply to the department for licensure.

(2) An applicant is entitled to take the licensure examination to practice in this state as a certified public accountant if the applicant:

(a) Is of good moral character; and

(b) Has met the following educational requirements from an accredited college or university:

1. If application is made prior to August 2, 1983, a baccalaureate degree with a major in accounting or its equivalent with a concentration in accounting and business to the extent specified by the board.

2. If application is made after August 1, 1983, a baccalaureate degree with a major in accounting or its equivalent plus at least 30 semester or 45 quarter hours in excess of those required for a 4-year baccalaureate degree, with a concentration in accounting and business in the total educational program to the extent specified by the board.

(3) The board shall have the authority to establish the standards for determining and shall determine:

(a) What constitutes a passing grade for each subject or part of the licensure examination;

(b) Which educational institutions, in addition to the universities in the State University System of Florida, shall be deemed to be accredited colleges or universities;

(c) What courses and number of hours constitute a major in accounting; and

(d) What courses and number of hours constitute additional accounting courses acceptable under subparagraph (2)(b)2.

(4)(a) "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The board may refuse to certify an applicant for failure to satisfy this requirement if:

1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and

2. The finding by the board of lack of good moral character is supported by competent substantial evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(5) The board may adopt an alternative licensure examination for persons who have been licensed to practice public accountancy or its equivalent in a foreign country so long as the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has ratified an agreement with that country for reciprocal licensure.

(6) For the purposes of maintaining the proper educational qualifications for licensure under this chapter, the board may appoint an Educational Advisory Committee, which shall be composed of one member of the board, two persons in public practice who are licensed under this chapter, and four academicians on faculties of universities in this state.

History.--ss. 5, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 3, 10, 11, ch. 85-9; s. 2, ch. 87-221; s. 4, ch. 91-429; s. 125, ch. 94-119; s. 3, ch. 98-340; s. 9, ch. 2000-332.

473.3065 Certified Public Accountant Education Minority Assistance Program; advisory council.--

(1) The Certified Public Accountant Education Minority Assistance Program for Florida residents is hereby established in the division for the purpose of providing scholarships to minority persons, as defined in s. 288.703(3), who are students enrolled in their fifth year of an accounting education program at an

institution in this state approved by the board by rule. A Certified Public Accountant Education Minority Assistance Advisory Council shall assist the board in administering the program.

(2) All moneys used to provide scholarships under the program shall be funded by a portion of existing license fees, as set by the board, not to exceed \$10 per license. Such moneys shall be deposited into the Professional Regulation Trust Fund in a separate account maintained for that purpose. The department is authorized to spend up to \$100,000 per year for the program from this program account, but may not allocate overhead charges to it. Moneys for scholarships shall be disbursed annually upon recommendation of the advisory council and approval by the board, based on the adopted eligibility criteria and comparative evaluation of all applicants. Funds in the program account may be invested by the Chief Financial Officer under the same limitations as apply to investment of other state funds, and all interest earned thereon shall be credited to the program account.

(3) The board shall adopt rules as necessary for administration of the program, including rules relating to the following:

(a) Eligibility criteria for receipt of a scholarship, which, at a minimum, shall include the following factors:

1. Financial need.
2. Ethnic, gender, or racial minority status pursuant to s. 288.703(3).
3. Scholastic ability and performance.

(b) Scholarship application procedures.

(c) Amounts in which scholarships may be provided, the total amount that may be provided, the timeframe for payments or partial payments, and criteria for how scholarship funds may be expended.

(d) The total amount of scholarships that can be made each year.

(e) The minimum balance that must be maintained in the program account.

(4) Determinations made by the board regarding recipients of scholarship moneys shall not be considered agency action for purposes of chapter 120.

(5) It is unlawful for any person or agent of such person to knowingly file with the board any notice, statement, or other document which is false or which contains any material misstatement of fact. A person who violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) There is hereby created the Certified Public Accountant Education Minority Assistance Advisory Council to assist the board in administering the program. The council shall be diverse and representative of the gender, ethnic, and racial categories set forth in s. 288.703(3).

(a) The council shall consist of five licensed Florida-certified public accountants selected by the board, of whom one shall be a board member who serves as chair of the council, one shall be a representative of the National Association of Black Accountants, one shall be a representative of the Cuban American CPA Association, and two shall be selected at large. At least one member of the council must be a woman.

(b) The board shall determine the terms for initial appointments and appointments thereafter.

(c) Any vacancy on the council shall be filled in the manner provided for the selection of the initial member. Any member appointed to fill a vacancy of an unexpired term shall be appointed for the remainder of that term.

(d) Three consecutive absences or absences constituting 50 percent or more of the council's meetings within any 12-month period shall cause the council membership of the member in question to become void, and the position shall be considered vacant.

(e) The members of the council shall serve without compensation, and any necessary and actual expenses incurred by a member while engaged in the business of the council shall be borne by such member or by the organization or agency such member represents. However, the council member who is a member of the board shall be compensated in accordance with the provisions of ss. 455.207(4) and 112.061.

History.--s. 1, ch. 98-263; s. 504, ch. 2003-261.

473.308 Licensure.--

(1) The department shall license any applicant who the board certifies is qualified to practice public accounting.

(2) The board shall certify for licensure any applicant who successfully passes the licensure examination and satisfies the requirements of s. 473.306 and shall certify for licensure any firm which satisfies the requirements of ss. 473.309 and 473.3101. The board may refuse to certify any applicant or firm that has violated any of the provisions of s. 473.322.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

- (a)1. Is not licensed and has not been licensed in another state or territory and who qualifies to take the examination as set forth in s. 473.306 and has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 473.306; and
- 2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a licensee in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or
- (b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria which existed in this state at the time the license was issued; or
- b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a., who qualifies to take the examination as set forth in s. 473.306 and has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 473.306; and
- 2. Has completed continuing education courses which are equivalent to the continuing education requirements for a licensee in this state during the 2 years immediately preceding her or his application for licensure by endorsement.
- (4) If application for licensure is made prior to October 1, 2008, and the applicant has at least 5 years of experience in the practice of public accountancy in the United States or in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States, or has at least 5 years of experience as an auditor or accountant in the employment of a unit of federal, state, or local government and that employment required the use of accounting skills as a substantial part of the applicant's duties and was under the supervision of a certified public accountant licensed by a state or territory of the United States, the board shall waive the requirements of s. 473.306(2)(b)2. that are in excess of a baccalaureate degree. All experience that is used as a basis for waiving the requirements of s. 473.306(2)(b)2. must be while licensed as a certified public accountant by another state or territory of the United States or while licensed in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States. The board shall have the authority to establish the standards for experience that meet this requirement.
- (5) The board may refuse to certify for licensure any applicant who is under investigation in another state for any act which would constitute a violation of this act or chapter 455, until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.--ss. 7, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 4, 10, 11, ch. 85-9; s. 1, ch. 86-102; s. 21, ch. 89-374; s. 4, ch. 91-429; ss. 126, 223, ch. 94-119; s. 3, ch. 94-151; s. 347, ch. 97-103; s. 115, ch. 98-166; s. 4, ch. 98-340; s. 1, ch. 2000-114; s. 176, ch. 2000-160; s. 10, ch. 2000-332; s. 1, ch. 2004-87.

473.309 Practice requirements for partnerships, corporations, and limited liability companies; business entities practicing public accounting.--

- (1) A partnership may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), unless:
 - (a) It is a form of partnership recognized by Florida law.
 - (b) Partners owning at least 51 percent of the financial interest and voting rights of the partnership are certified public accountants in some state. However, each partner who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.
 - (c) At least one general partner is a certified public accountant of this state and holds an active license.
 - (d) All partners who are not certified public accountants in any state are engaged in the business of the partnership as their principal occupation.
 - (e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.
 - (f) It is currently licensed as required by s. 473.3101.

(2) A corporation may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), unless:

- (a) It is a corporation duly organized in this or some other state.
- (b) Shareholders of the corporation owning at least 51 percent of the financial interest and voting rights of the corporation are certified public accountants in some state and are principally engaged in the business of the corporation. However, each shareholder who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.
- (c) The principal officer of the corporation is a certified public accountant in some state.
- (d) At least one shareholder of the corporation is a certified public accountant and holds an active license in this state.
- (e) All shareholders who are not certified public accountants in any state are engaged in the business of the corporation as their principal occupation.
- (f) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.
- (g) It is currently licensed as required by s. 473.3101.

(3) A limited liability company may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), unless:

- (a) It is a limited liability company duly organized in this or some other state.
- (b) Members of the limited liability company owning at least 51 percent of the financial interest and voting rights of the company are certified public accountants in some state. However, each member who is a certified public accountant in some state and is domiciled in this state must be a certified public accountant of this state and hold an active license.
- (c) At least one member of the limited liability company is a certified public accountant and holds an active license in this state.
- (d) All members who are not certified public accountants in any state are engaged in the business of the company as their principal occupation.
- (e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.
- (f) It is currently licensed as required by s. 473.3101.

(4) A partnership, corporation, limited liability company, or any other business entity is engaged in the practice of public accounting if its employees are engaged in the practice of public accounting. Notwithstanding any other provision of law, a licensed audit firm may own all or part of another licensed audit firm.

History.--ss. 8, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 22, ch. 89-374; s. 4, ch. 91-429; s. 16, ch. 93-110; s. 1, ch. 93-284; s. 1, ch. 97-35; s. 5, ch. 98-340; s. 2, ch. 2000-114.

473.3101 Licensure of sole proprietors, partnerships, corporations, limited liability companies, and other legal entities.--

(1) Each sole proprietor, partnership, corporation, limited liability company, or any other legal entity seeking to engage in the practice of public accounting, as defined in s. 473.302(7)(a), in this state must file an application for licensure with the department and supply the information the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

(2) The board shall determine whether the sole proprietor, partnership, corporation, limited liability company, or any other legal entity meets the requirements for practice and, pending that determination, may certify to the department the partnership, corporation, or limited liability company for provisional licensure.

(3) Each license must be renewed every 2 years. Each sole proprietor, partnership, corporation, limited liability company, or any other legal entity licensed under this section must notify the department within 1 month after any change in the information contained in the application on which its license is based.

History.--ss. 9, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 17, ch. 93-110; s. 2, ch. 93-284; s. 6, ch. 98-340.

473.311 Renewal of license.--

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the board that the licensee has satisfactorily completed the continuing education

requirements of s. 473.312 and has passed an examination approved by the board on chapter 455 and this chapter and the related administrative rules. However, each licensee must complete the requirements of s. 473.312(1)(c) prior to taking the examination.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

History.--ss. 11, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 5, 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 220, ch. 94-119; s. 116, ch. 98-166; s. 177, ch. 2000-160; s. 2, ch. 2004-87.

473.312 Continuing education.--

(1)(a) As part of the license renewal procedure, the board shall by rule require licensees to submit proof satisfactory to the board that during the 2 years prior to application for renewal, they have successfully completed not less than 48 or more than 80 classroom hours of continuing professional education programs in public accounting subjects approved by the board. The board may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.

(b) Not less than 25 percent of the total hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

(2) Programs of continuing professional education approved by the board shall be formal programs of learning which contribute directly to the professional competency of an individual following licensure to practice public accounting and may be any of the following:

(a) Professional development programs of the American Institute of Certified Public Accountants, state societies of certified public accountants, or other organizations.

(b) Technical sessions at meetings of the American Institute of Certified Public Accountants, state societies, chapters, or other organizations.

(c) University and college courses.

(d) Formal organized in-firm education programs.

(3) The board shall adopt rules establishing the continuing education requirements for licensees who are engaged in the audit of a governmental entity. The board shall approve subjects directly related to the governmental environment and to governmental auditing for purposes of satisfying the requirement of this subsection.

(4) For the purposes of maintaining proper continuing education requirements for renewal of licensure under this chapter, the board may appoint a Continuing Professional Education Advisory Committee, which shall be composed of one member of the board, one academician on the faculty of a university in this state, and six certified public accountants.

History.--ss. 10, 25, ch. 79-202; s. 345, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 6, 10, 11, ch. 85-9; s. 3, ch. 87-221; s. 2, ch. 89-87; s. 4, ch. 91-429; s. 7, ch. 98-340; s. 3, ch. 2004-87.

473.313 Inactive status.--

(1) A licensee may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(2) A license that has become inactive may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The minimum continuing education requirements for reactivating a license shall be those of the most recent biennium plus one-half of the requirements in s. 473.312 for each year or part thereof during which the license was inactive. Notwithstanding any other provision of this section, the continuing education requirements are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects and not more than 30 hours in behavioral subjects, for the reactivation of a license that is inactive on June 30, 1998, if the licensee notifies the Board of Accountancy by December 31, 1998, of an intention to reactivate such a license and completes such reactivation by June 30, 2000.

(3) Any licensee holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require, in addition to the payment of fees, the passing of the

examination approved by the board concerning chapter 455 and this chapter, and the related administrative rules, and the completion of required continuing education.

(4) Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that such an individual meet all continuing education requirements as provided in s. 473.312, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

History.--ss. 12, 25, ch. 79-202; s. 346, ch. 81-259; ss. 17, 18, ch. 81-302; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 53, ch. 83-329; ss. 7, 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 221, ch. 94-119; s. 348, ch. 97-103; s. 8, ch. 98-340; s. 5, ch. 2001-269.

473.314 Temporary license.--

(1) The board shall adopt rules providing for the issuance of temporary licenses to certified public accountants or firms of other states, for the purpose of enabling them or their employees to perform specific engagements involving the practice of public accountancy in this state. No temporary license shall be valid for more than 90 days after its issuance, and no license shall cover more than one engagement. After the expiration of 90 days, a new license shall be required.

(2) Each application for a temporary license shall state the names of all persons who are to enter this state and shall be accompanied by a fee in an amount established by the board not to exceed \$400.

(3) A temporary license shall not be required of a person entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters.

(4) Upon certification of the applicant by the board, the department shall issue a temporary license to the applicant.

(5) The application for a temporary license shall constitute the appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with, or incidental to, the practice of public accounting for which the temporary license was issued.

History.--ss. 13, 25, ch. 79-202; s. 347, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 24, ch. 91-137; s. 4, ch. 91-429.

473.315 Independence, technical standards.--

(1) A certified public accountant shall not express an opinion on the financial statements of an enterprise unless she or he and her or his firm are independent with respect to such enterprise.

(2) A certified public accountant shall not undertake any engagement in the practice of public accounting which she or he or her or his firm cannot reasonably expect to complete with professional competence.

(3) The board shall adopt rules establishing the standards of practice of public accounting, including, but not limited to, independence, competence, and technical standards.

(4) Attorneys who are admitted to practice law by the Supreme Court of Florida are exempt from the standards of practice of public accounting as defined in s. 473.302(7)(b) and (c) when such standards conflict with the rules of The Florida Bar or orders of the Florida Supreme Court.

History.--ss. 14, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 349, ch. 97-103; s. 9, ch. 98-340.

473.316 Communications between the accountant and client privileged.--

(1) For purposes of this section:

(a) An "accountant" is a certified public accountant.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.

(c) A communication between an accountant and her or his client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.

2. Those reasonably necessary for the transmission of the communication.

(d) A "quality review" is a study, appraisal, or review of one or more aspects of the professional work of a licensee in the practice of public accountancy which is conducted by a professional organization for the

purpose of evaluating quality assurance required by professional standards, including a quality assurance or peer review.

(e) A "review committee" is any person or persons who are not owners or employees of a licensee that is the subject of a quality review and who carry out, administer, or oversee a quality review.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The accountant, but only on behalf of the client. The accountant's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no accountant-client privilege under this section when:

(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.

(b) A communication is relevant to an issue of breach of duty by the accountant to her or his client or by the client to her or his accountant.

(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.

(5) Communications are not privileged from disclosure in any disciplinary investigation or proceeding conducted pursuant to this act by the department or before the board or in any judicial review of such a proceeding. In any such proceeding, a certified public accountant or public accountant, without the consent of her or his client, may testify with respect to any communication between the accountant and the accountant's client or be compelled, pursuant to a subpoena of the department or the board, to testify or produce records, books, or papers. Such a communication disclosed to the board and records of the board relating to the communication shall for all other purposes and proceedings be a privileged communication in all of the courts of this state.

(6) The proceedings, records, and workpapers of a review committee are privileged and are not subject to discovery, subpoena, or other means of legal process or to introduction into evidence in a civil action or arbitration, administrative proceeding, or state accountancy board proceeding. A member of a review committee or person who was involved in a quality review may not testify in a civil action or arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced or disclosed during the quality review or as to any findings, recommendations, evaluations, opinions, or other actions of the review committee or any members thereof. Public records and materials prepared for a particular engagement are not privileged merely because they were presented during the quality review. This privilege does not apply to disputes between a review committee and a person subject to a quality review.

History.--ss. 15, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 1, ch. 91-63; s. 26, ch. 91-140; s. 4, ch. 91-429; s. 350, ch. 97-103.

473.318 Ownership of working papers.--All statements, records, schedules, working papers, and memoranda made by a licensee or her or his employee incident to, or in the course of, professional services to a client, except the reports submitted by the licensee to the client and except for records which are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary.

History.--ss. 17, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 351, ch. 97-103.

473.319 Contingent fees.--Public accounting services as defined in s. 473.302(7)(a) and (c), and those that include tax filings with federal, state, or local government, shall not be offered or rendered for a fee contingent upon the findings or results of such service. This section does not apply to services involving

federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for purposes of this section.

History.--ss. 18, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 2, ch. 97-35; s. 10, ch. 98-340.

473.3205 Commissions or referral fees.--A licensee may not accept or pay a commission or referral fee in connection with the sale or referral of public accounting services as defined in s. 473.302(7)(a) and (c). Any certified public accountant or business entity that is engaged in the practice of public accounting and that accepts a commission for the sale of a product or service to a client must disclose that fact to the client in writing in accordance with rules adopted by the board. However, this section shall not prohibit:

- (1) Payments for the purchase of an accounting practice;
- (2) Retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates; or
- (3) Payment of fees to a referring licensee for public accounting services to either the successor licensee or the client in connection with an engagement.

History.--ss. 3, 5, ch. 89-87; s. 4, ch. 91-429; s. 3, ch. 97-35; s. 352, ch. 97-103; s. 11, ch. 98-340.

473.321 Fictitious names.--

(1) A certified public accountant, partnership, corporation, or limited liability company may not practice public accountancy in this state under any name that is misleading or deceptive as to the legal form; as to persons who are partners, officers, shareholders, or members of the firm; or as to any other matter. However, a firm name may include the names of retired or deceased persons who were active partners, shareholders, or members of the firm.

(2) This section does not prohibit any licensee from practicing public accounting under a fictitious name that is not misleading or deceptive as to the persons who are partners, officers, shareholders, or members.

(3) The board shall adopt rules for interpretation of this section.

History.--ss. 19, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 18, ch. 93-110; s. 3, ch. 93-284.

473.322 Prohibitions; penalties.--

(1) A person may not knowingly:

- (a) Practice public accounting unless the person is a certified public accountant or a public accountant;
- (b) Assume or use the titles or designations "certified public accountant" or "public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that the person holds a license to practice public accounting under this chapter or the laws of any other state, territory, or foreign jurisdiction, unless the person holds an active license under this chapter;
- (c) Perform or offer to perform any services described in s. 473.302(7)(a) unless such person holds an active license under this chapter and is a licensed audit firm or provides such services through a licensed audit firm. This paragraph does not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon;
- (d) Present as her or his own the license of another;
- (e) Give false or forged evidence to the board or a member thereof;
- (f) Use or attempt to use a public accounting license that has been suspended, revoked, or placed on inactive or delinquent status;
- (g) Employ unlicensed persons to practice public accounting; or
- (h) Conceal information relative to violations of this chapter.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.--ss. 20, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 104, ch. 91-224; s. 4, ch. 91-429; s. 222, ch. 94-119; s. 2, ch. 94-151; s. 2, ch. 96-261; s. 1116, ch. 97-103; s. 12, ch. 98-340; s. 3, ch. 2000-114.

473.323 Disciplinary proceedings.--

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

- (a) Violation of any provision of s. 455.227(1) or any other provision of this chapter.
- (b) Attempting to procure a license to practice public accounting by bribery or fraudulent misrepresentations.
- (c) Having a license to practice public accounting revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
- (d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting.
- (e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a certified public accountant.
- (f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- (g) Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of public accounting.
- (h) Violation of any rule adopted pursuant to this chapter or chapter 455.
- (i) Practicing on a revoked, suspended, inactive, or delinquent license.
- (j) Suspension or revocation of the right to practice before any state or federal agency.
- (k) Performance of any fraudulent act while holding a license to practice public accounting.
- (l) Failing to maintain a good moral character as provided in s. 473.306.
- (m) Failing to provide any written disclosure to a client or the public which is required by this chapter or rule of the board.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any licensee guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for licensure.
 - (b) Revocation or suspension of a license.
 - (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
 - (d) Issuance of a reprimand.
 - (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.
 - (f) Restriction of the authorized scope of practice by the certified public accountant.
- (4) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.--ss. 21, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 8, 10, 11, ch. 85-9; s. 25, ch. 91-137; s. 4, ch. 91-429; s. 224, ch. 94-119; s. 4, ch. 94-151; s. 5, ch. 95-140; s. 3, ch. 96-261; s. 4, ch. 97-35; s. 117, ch. 98-166; s. 3, ch. 2000-154; s. 17

**61H1 DIVISION OF CERTIFIED PUBLIC ACCOUNTING BOARD OF
ACCOUNTANCY**

**CHAPTER 61H1-19 PURPOSE, ORGANIZATION, RULEMAKING PROCEEDINGS,
ETC.**

- 61H1-19.002 Organization. (Repealed)
- 61H1-19.003 Administrative Procedures. (Repealed)
- 61H1-19.006 Attendance at Board Meetings, Unexcused Absences.
- 61H1-19.007 Probable Cause Panel.
- 61H1-19.008 Committees.
- 61H1-19.009 Other Board Business for Which Compensation Is Allowed.
- 61H1-19.010 Criteria for Investigators and Consultants.

61H1-19.006 Attendance at Board Meetings, Unexcused Absences.

- (1) Board members shall attend all regularly scheduled Board meetings unless prevented from doing so by reason of the illness of the Board member or a member of the Board member's family, death of a member of the Board member's immediate family, or natural disaster.
- (2) No Board member may be absent from three consecutive regularly scheduled Board meetings unless the absence is excused for one of the reasons stated in subsection (1) of this rule. An absence for any reason other than the reasons stated in subsection (1) constitutes an unexcused absence for the purpose of declaring a vacancy of the Board. An otherwise excused absence is not excused if the Board member fails to notify the Board office of the impending absence prior to the regularly scheduled Board meeting at which the absence will occur or unless the failure to notify the Board office is the result of circumstances surrounding the reason for the absence which the Board itself excuses after the absence has occurred.
- (3) "Family" consists of immediate family, nieces, nephews, cousins, and in-laws.
- (4) "Immediate family" consists of spouse, child, parents, parents-in-law, siblings, grandchildren, and grandparents.

Specific Authority 455.207(3), 473.304 FS. Law Implemented 455.207(3) FS. History—New 9-30-97.

61H1-19.007 Probable Cause Panel.

- (1) The determination whether probable cause exists to believe that a violation of any of the provisions of Chapters 455 and 473, F.S., or the rules promulgated pursuant thereto has occurred, shall be made by a majority vote of a probable cause panel of the Board.
- (2) The probable cause panel shall be composed of at least three (3) members. Any panel so appointed must contain at least one present Board member and at least one present or former Board member who is a Certified Public Accountant. Any former Board member appointed to a panel must hold an active, valid license to practice. In addition, a former or present consumer member must serve on the panel if a consumer member is available, willing to serve, and appointed by the Chairman.
- (3) The probable cause panel shall be selected by the Chairman, one of whom shall be designated by the Chairman as presiding officer of the panel.
- (4) The probable cause panel shall meet at such times as called by the presiding officer of the panel.
- (5) The Chairman, at his discretion, shall, as needed, appoint multiple probable cause panels which panels shall be constituted as set forth in subsection (2) above.

Specific Authority 120.53, 455.225, 455.225(4), 473.304 FS. Law Implemented 455.013, 455.225, 455.225(4) FS. History—New 12-4-79, Formerly 21A-19.07, Amended 12-2-92, Formerly 21A-19.007, Amended 7-14-02.

61H1-19.008 Committees.

- (1) The Board may appoint such advisory committees as it deems necessary to effectively administer, implement and carry out the provisions of Chapters 455 and 473, F.S., and the rules promulgated pursuant thereto. Such committees shall be guided and assisted administratively by the Department and the Board.
- (2) Committees shall operate under the same administrative rules and procedures which are applicable to, and used by, the Board. Committees shall, on or before December 1 of each year, make an evaluation of the activities under their charge for the preceding fiscal year and the related fees and costs and shall report findings and recommendations to the Board.
- (3) A vacancy shall occur upon the failure of any committee member who is not a Board member to attend two consecutive meetings of the committee to which he was duly appointed.

Specific Authority 120.53, 473.304 FS. Law Implemented 120.53, 20.30(5) FS. History—New 2-3-81, Formerly 21A-19.08, Amended 12-2-92, Formerly 21A-19.008.

61H1-19.009 Other Board Business for Which Compensation Is Allowed.

The following are considered to be other business involving the Board as required by Section 455.207(4), F.S.:

- (1) All joint Board or Committee meetings required by statutes, Board rule or Board action.
- (2) Meetings of Board members with Department staff or contractors of the Department at the Department's or the Board's request. Any participation or meeting of members notice or unnoticed will be on file in the Board office.
- (3) Where a Board member has been requested by the Secretary of the Department to participate in a meeting.
- (4) Probable Cause Meeting.
- (5) All activity of Board members, if authorized by the Board, when grading, proctoring or reviewing examinations given by the Department.
- (6) All participation in Board authorized meetings with professional associations of which the Board is a member or invitee. This would include all meetings of national associations of registration Boards of which the Board is a member as well as Board authorized participation in meetings of national or professional associations or organizations involved in educating, regulating or reviewing the profession over which the Board has statutory authority.
- (7) Any and all other activities which are Board approved and which are necessary for Board members to attend in order to further protect the public health, safety and welfare, through the regulation of which the Board has statutory authority.

Specific Authority 120.53(1) FS., Ch. 81-302, § 28, Laws of Florida. Law Implemented 120.53(1) FS., Ch. 81-302, § 28, Laws of Florida. History—New 11-2-81, Formerly 21A-19.09, 21A-19.009, Amended 1-11-95.

61H1-19.010 Criteria for Investigators and Consultants.

Except for investigation of non-technical matters, all investigators and consultants hired by the Department of Business and Professional Regulation who undertake the investigation of Florida CPA's shall be active certified public accountants with a minimum of five (5) years of active licensure in the area of public accountancy. Non-technical matters are defined as those not encompassing the technical proficiency of a licensee in the practice of public accountancy.

Specific Authority 455.203(8) FS., Ch. 81-302, § 27, Laws of Florida. Law Implemented 455.203(8) FS., Ch. 81-302, § 27, Laws of Florida History—New 11-2-81, Formerly 21A-19.10, 21A-19.010.

CHAPTER 61H1-20 DEFINITIONS

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| 61H1-20.001 | Licensee. |
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| 61H1-20.003 | Client. |
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- 61H1-20.0099 Standards for Attestation Engagements.
- 61H1-20.010 Engagement.
- 61H1-20.011 Practice of, or Practicing Public Accountancy. (Repealed)
- 61H1-20.012 Holding Out. (Repealed)
- 61H1-20.013 Employee.
- 61H1-20.015 Partnership. (Repealed)
- 61H1-20.016 Non-CPA Shareholders, Partners, and Members.

61H1-20.001 Licensee.

(1) "Licensee" shall be deemed and construed to mean a person, partnership or corporation which holds an active, inactive or temporary license issued under Chapter 473, F.S.

(2) A "suspended certified public accountant" is prohibited from practicing public accounting as a sole proprietor, partner or shareholder and using the CPA designation. A suspended licensee may be an employee under the supervision of a certified public accountant who holds an active license.

Specific Authority 473.304 FS. Law Implemented 473.304 FS. History—New 12-4-79, Formerly 21A-20.01, Amended 10-20-86, Formerly 21A-20.001.

61H1-20.002 "Attest as an Expert in Accountancy to the Reliability or Fairness of Presentation" or "Expression of Opinion."

The terms "attest as an expert in accountancy to the reliability or fairness of presentation" and "expression of opinion" shall be deemed and construed to mean any report, transmittal letter or other written communication issued as a result of an examination or review of financial statements or financial information which contains either an expression of opinion or other assurance as to the fairness, accuracy or reliability of such financial statements within the meaning of generally accepted auditing standards or standards for accounting and review services. A report issued in connection with a review of financial statements is an "expression of opinion." Statements, affidavits or signatures of preparers required on tax returns and reports issued in connection with a compilation of financial statements are not "expressions of opinion," but compilations do provide a level of assurance.

Specific Authority 473.304, 473.315, 473.317, 473.322 FS. Law Implemented 473.315, 473.317, 473.322 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-20.02, 21A-20.002, Amended 1-11-95.

61H1-20.003 Client.

"Client" shall be deemed and construed to mean the person(s) or entity which retains a licensee for the performance of public accounting services.

Specific Authority 473.304, 473.323 FS. Law Implemented 473.317, 473.318, 473.319 FS. History—New 12-4-79, Formerly 21A-20.03, 21A-20.003.

61H1-20.004 Enterprise.

"Enterprise" shall be deemed and construed to mean any person(s) or entity, whether organized for profit or not, for which a licensee provides public accounting services.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Formerly 21A-20.04, 21A-20.004

61H1-20.005 Financial Statements.

"Financial Statements" shall be deemed and construed to mean a presentation of financial data, including accompanying notes, derived from accounting records that purports to show actual or anticipated financial position and intended to communicate an entity's economic resources or obligations at a point in time, and the results of operations and cash flows for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-20.05, Amended 3-22-89, 12-2-92, Formerly 21A-20.005.

61H1-20.0051 Assembled Financial Statements.

(1) "Assembled Financial Statements" shall be deemed and construed to mean providing various manual or automated bookkeeping or data processing services the output of which is in the form of financial statements. The function of assembling financial statements includes preparing a working trial balance, assisting in adjusting the books of account, and consulting on accounting matters. The transmittal letter accompanying the assembled financial statements shall be prepared on the Licensed Audit Firm or unlicensed entities' letterhead.

(2) The term "assembled financial statements" refers to any financial statements included in Section 473.302(7)(c), F.S.

(3) There is provided a specific exemption to Rule 61H1-22.004, F.A.C., for certified public accountants who prepare assembled financial statements if, and only if, such assembled financial statements are prepared in accordance with Rule 61H1-20.0053, F.A.C.

Specific Authority 473.304, 473.315 FS. Law Implemented ss. 1, 12, Ch. 98-340, Laws of Florida. History– New 10-28-98.

61H1-20.0052 Offer to Perform or Perform Services Involving Assembled Financial Statements.

The term "offer to perform or perform services involving assembled financial statements" as used in Rule 61H1-20.0053, F.A.C., applies to an actively licensed Certified Public Accountant who performs one or more types of services involving the preparation of assembled financial statements including:

- (1) Being in charge of the engagement; or
- (2) Reviewing the work papers or financial statements; or
- (3) Supervising the engagement; or
- (4) Being the only licensee involved with providing services involved in the preparation of financial statements.

Specific Authority 473.304, 473.315 FS. Law Implemented ss. 1, 12, Ch. 98-340, Laws of Florida. History– New 10-28-98.

61H1-20.0053 Standards for Assembled Financial Statements.

A Certified Public Accountant holding an active license may offer to perform or perform services involving assembled financial statements so long as the Certified Public Accountant complies with the standards for assembled financial statements, which are as follows:

(1) Understanding with the Entity – The Certified Public Accountant shall establish a written understanding with the entity regarding the services to be performed. This written understanding shall include a description of the nature and limitations of the services to be performed. The understanding shall also provide:

- (a) That the engagement cannot be relied upon to disclose errors, fraud, or illegal acts; and
- (b) Disclose whether or not the entity preparing the financial statement is or is not licensed by the Florida Board of Accountancy. An example engagement letter is provided for illustrative purposes:
(Appropriate Salutation)

This letter is to confirm our understanding of the terms and objectives of our engagement to provide accounting services during (date), the output of which will be in the form of (monthly/quarterly/other frequency) assembled financial statements.

- We will perform the following services (selected illustrations):
- Assist you in recording transactions on a (monthly/quarterly/other frequency) basis.
- Prepare a trial balance from your accounts and journals.
- Assemble that information in the form of financial statements.
- Provide comments of a business advisory nature.

We do not undertake to, and will not, provide any opinion or form of assurance on the financial statements we assemble in connection with these services and, accordingly, we do not undertake to make inquiries or perform other procedures to verify, corroborate, or review information supplied by you. In addition, those statements may (will) contain departures from generally accepted accounting principles or another comprehensive basis of accounting. Our engagement to assemble financial statements cannot be relied upon to disclose errors, fraud, or illegal acts, including fraud or defalcations that may exist. These assembled financial statements are prepared by an entity that is (is not) licensed by the Florida Board of Accountancy.

Our fees for these services. . . .

We shall be pleased to discuss this letter with you at any time.

If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us.

Sincerely yours,

(Signature of certified public accountant)

Accepted and agreed to:

XYZ Company

President

Date

(2) Any Certified Public Accountant who offers to perform or performs assembled financial statements must comply with the provisions of Rule 61H1-22.001, F.A.C.

(3) Language or style similar to that used in reports as defined in Rule 61H1-20.009, F.A.C., shall be avoided to reduce any possible risk of misunderstanding.

(4) Assembled financial statements are not prepared with an expression of any form of opinion or assurance.

(5) Assembled financial statements shall be accompanied by a transmittal letter. See example standard transmittal letter following (12) below.

(6) Before issuing the transmittal letter, the Certified Public Accountant shall read the assembled financial statements and consider whether such financial statements appear to be free from obvious material errors. In this context, the term error refers to mistakes in the assembly of financial statements, including arithmetical or clerical mistakes.

(7) The date of completion of the assembled financial statement(s) shall be used as the date of the transmittal letter.

(8) The transmittal letter shall include the name and license number of the Certified Public Accountant who offers to perform or performs services involving assembled financial statements. If more than one Certified Public Accountant offers to perform or performs such services, then the name and license number of the Certified Public Accountant who assumes responsibility for the statements shall be included. If a Licensed Audit Firm offers to perform or performs such services, the name and license number of the firm may be utilized instead of the name and license number of an individual Certified Public Accountant.

(9) The following language shall be included in the transmittal letter and on each page of the assembled financial statements: These assembled financial statements are not prepared with an expression of any form of opinion or assurance and they are prepared by an entity that is (is not) licensed by the Florida Board of Accountancy.

(10) If the Licensed Audit Firm, Certified Public Accountant or the Certified Public Accountant's employer is not independent, as defined in Rule 61H1-20.001, F.A.C., the transmittal letter shall disclose the lack of independence.

(11) Transmittal letters may include comments of a business advisory nature to which the Certified Public Accountant wishes to draw the client's attention.

(12) An example standard transmittal letter is provided for illustrative purposes: (Date)

These assembled financial statements for XYZ Company as of (date) are prepared without an expression of any form of opinion or assurance and they are prepared by an entity that is (is not) licensed by the Florida Board of Accountancy. (Comments of a business advisory nature may be included in a separate paragraph(s)).

(Signature of Licensed Audit Firm), or

(Signature of Active Licensee)

(License Number)

Specific Authority 473.304, 473.315 FS. Law Implemented 473.302, 473.322 FS. History—New 10-28-98, Amended 9-20-00.

61H1-20.006 Firm or Firms of Certified Public Accountants.

“Firm” or “Firms of Certified Public Accountants” shall be deemed and construed to mean a sole proprietor, partnership, professional corporation or limited liability company engaged in the practice of public accounting, including individual partners, stockholders or members thereof.

Specific Authority 473.302, 473.304 FS. Law Implemented 473.303 FS. History–New 12-4-79, Formerly 21A-20.06, 21A-20.006, Amended 11-4-93.

61H1-20.007 Generally Accepted Accounting Principles.

“Generally Accepted Accounting Principles” shall be deemed and construed to mean accounting principles generally accepted in the United States of America in effect as of June 30, 2002, including, but not limited to, Accounting Principles Board Opinions Nos. 1 to 31 as published by the American Institute of Certified Public Accountants, and statements of accounting standards and interpretations thereof, as published by the Financial Accounting Standards Board (FASB), the Government Accounting Standards Board (GASB) and the Federal Accounting Standards Advisory Board (FASAB). The FASB materials are entitled Original Pronouncements 2001/2002 Edition, vols. I, II, & III, dated 12/31/00, and available from FASB, 401 Merritt 7, P. O. Box 5116, Norwalk, CT 06856-5116, 1(888) 777-7077, <http://www.cpa2biz.com>. The GASB materials are entitled Governmental Accounting and Financial Reporting Standards, (Statement 34 Edition), available from GASB, 401 Merritt 7, P. O. Box 5116, Norwalk, CT 06850-5116. The FASAB materials are entitled FASAB Statements 1-22, dated 12/31/00, and are available from FASAB, 750 First Street, Suite 1001, Washington, D.C. 20002, (202) 512-7350.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 12-4-79, Amended 2-3-81, 3-16-81, 1-25-82, 7-6-82 12-9-82, 7-27-83, 3-22-84, 7-2-85, Formerly 21A-20.07, Amended 9-23-86, 5-22-88, 4-8-90, 4-21-91, Formerly 21A-20.007, Amended 10-19-94, 9-30-97, 9-29-02.

61H1-20.008 Generally Accepted Auditing Standards.

“Generally Accepted Auditing Standards” shall be deemed and construed to mean auditing standards generally accepted in the United States of America in effect as of June 30, 2002, including, but not limited to, general, field work and reporting standards approved and adopted by the membership of the American Institute of Certified Public Accountants (AICPA), as amended by the AICPA Auditing Standard Board (ASB) and standards promulgated by the ASB in the form of Statements on Auditing Standards (entitled Codification of Statements on Auditing Standards, (including Statements on Standards for Attestation Engagements) Numbers 1 to 93, dated 2001, available from the AICPA’s Resource Online at www.cpa2biz.com or call 1(888) 777-7077).

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 12-4-79, Amended 3-16-81, 7-6-82, 12-9-82 7-27-83, 3-22-84, 7-2-85, Formerly 21A-20.08, Amended 9-23-86, 5-22-88, 4-8-90, 4-21-91, Formerly 21A-20.008, Amended 10-19-94, 9-30-97, 9-29-02.

61H1-20.009 Standards for Accounting and Review Services.

“Standards for Accounting and Review Services” shall be deemed and construed to mean Statements on Standards for Accounting and Review Services published by the American Institute of Certified Public Accountants in effect as of June 30, 2002. (Entitled Codification of Statements on Standards for Accounting and Review Services, Numbers 1-8, dated 1/1/02, available from the AICPA’s Resource Online at www.cpa2biz.com or call 1(888) 777-7077).

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 12-4-79, Amended 3-16-81, 1-25-82, 7-6-82, 12-9-82 7-27-83, 3-22-84, 7-2-85, Formerly 21A-20.09, Amended 9-23-86, 5-22-88, 4-8-90, 4-21-91, Formerly 21A-20.009, Amended 10-19-94, 9-30-97, 9-29-02.

61H1-20.0092 Government Auditing Standards.

“Government Auditing Standards” shall be deemed and construed to mean Government Audit Standards issued by the Comptroller General of the United States, in effect as of June 30, 2002. (Entitled Government Auditing Standards, 1994 Revision, and its Amendments entitled Government Auditing Standards Amendment No. 1, Documentation Requirements When Assessing Control Risk at Maximum for Controls Significantly Dependent Upon Computerized Information Systems, GAO/A-GAGAS-1, revised May 1999, and Amendment No. 2, Auditor Communication, GAO/A-GAGAS-2, revised July 1999, available from the United States General Accounting Office, Washington, D.C. 20548-0001).

Specific Authority 473.304, 473.315 FS. Law Implemented 473.304, 473.315 FS. History–New 10-28-86, Amended 5-22-88, 4-8-90, 4-21-91, Formerly 21A-20.0092, Amended 10-19-94, 9-30-97, 9-29-02.

61H1-20.0093 Rules of the Auditor General.

“Rules of the Auditor General” shall be deemed and construed to mean the following Rules of the Auditor General of the State of Florida (effective 9-30-01), in effect as of June 30, 2002: These rules are available from the State of Florida, Auditor General’s Office or from the website <http://www.state.fl.us/audgen>, under the Rules and Guidelines section.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 10-22-86, Amended 5-22-88, 4-8-90, 4-21-91, Formerly 21A-20.0093, Amended 9-30-97, 9-29-02.

61H1-20.0095 Standards for Consulting Services.

“Standards for Consulting Services” shall be deemed and construed to mean Statements on Standards for Consulting Services, aka CS Section 100, Consulting Services: Definitions and Standards from the AICPA Professional Standards published by the American Institute of Certified Public Accountants, in effect as of June 30, 2002, available from the AICPA’s Resource Online at www.cpa2biz.com or call 1(888) 777-7077.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 5-20-91, Formerly 21A-20.0095, Amended 9-30-97, 9-29-02.

61H1-20.0096 Services for Tax Practice.

“Standards for Tax Services” shall be deemed and construed to mean Statements on Standards for Tax Services, dated August 2000, as published by the American Institute of Certified Public Accountants, and in effect as of June 30, 2002.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 5-20-91, Formerly 21A-20.0096, Amended 9-30-97, 9-29-02.

61H1-20.0097 Standards for Personal Financial Planning.

“Standards for Personal Financial Planning” shall be deemed and construed to mean Basic Personal Financial Planning Engagement Functions and Responsibilities First Issued October 1992; Revised January 1996, aka Statements on Responsibilities in Personal Financial Planning Practice, as published by the American Institute of Certified Public Accountants, in effect as of June 30, 2002, available from the AICPA’s Resource Online at www.cpa2biz.com or call 1(888) 777-7077.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 11-8-95, Amended 9-30-97, 9-29-02.

61H1-20.0098 Standards for Business Valuations.

“Standards for Business Valuations” shall be deemed and construed to mean “Consulting Services Practice Aid 93-3, Conducting a Valuation of a Closely Held Business,” dated 1993, as published by the American Institute of Certified Public Accountants, in effect as of June 30, 2002. (Available from the AICPA’s + Resource Online at www.cpa2biz.com or call 1(888) 777-7077).

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 11-8-95, Amended 9-30-97, 9-29-02.

61H1-20.0099 Standards for Attestation Engagements.

“Standards for Attestation Engagements” shall be deemed and construed to mean Statements on Standards for Attestation Engagements published by the American Institute of Certified Public Accountants, (entitled Codification of Statements on Standards for Attestation Engagements, Numbers 1 to 11, dated January 1, 2002, available from the AICPA’s Resource Online at www.cpa2biz.com or call 1(888)777-7077), in effect as of June 30, 2002.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 9-29-96, Amended 6-22-98, 9-29-02.

61H1-20.010 Engagement.

“Engagement” shall be deemed and construed to mean the association between a client and a licensee relative to the performance of public accounting services by the licensee for the client.

Specific Authority 473.304, 473.314, 473.315, 473.317 FS. Law Implemented 473.314, 473.315, 473.317 FS. History–New 12-4-79, Formerly 21A-20.10, 21A-20.010.

Chapter Title

10.550 Local Government Entity Audits

10.650 State Single Audits – Non-profit and For-profit Organizations

10.700 Audits of Direct-Support Organizations and Citizen-Support Organizations

10.800 District School Board Audits

10.850 Charter School Audits

61H1-20.013 Employee.

A licensee would be considered an employee of a CPA firm for purposes of Chapter 473 if the licensee has the status of an employee under the usual common law rules applicable in determining the employer-employee relationship. A licensee may be licensed to a CPA firm through an employee leasing company as defined in Section 443.036(16), F.S., as long as the CPA firm has the power to hire and fire, has complete supervision and control over the licensee's work product, and accepts the licensee as its responsibility for purposes of complying with 61H1-26.002, F.A.C.

Specific Authority 473.304, FS. Law Implemented 473.302, 473.309(1)(b), 473.3101 FS. History—New 10-17-90, Formerly 21A-20.013

61H1-20.016 Non-CPA Shareholders, Partners, and Members.

(1) For purposes of Chapter 473, F.S., and these rules, the terms non-CPA shareholders, partners, and members shall be deemed and construed to mean natural persons materially participating in the business conducted by the firm and when their participation ceases, their interest shall revert to the firm.

(2) Non-CPA shareholders, partners, and members shall not hold themselves out as Certified Public Accountants or Public Accountants.

Specific Authority 473.304 FS., s. 1, Chapter 97-35, Laws of Florida. Law Implemented s. 1, Chapter 97-35, Laws of Florida. History—New 2-5-98.

CHAPTER 61H1-21 INDEPENDENCE, INTEGRITY, ETC.

61H1-21.001 Independence.

61H1-21.002 Integrity and Objectivity.

61H1-21.003 Commissions or Referral Fees.

61H1-21.005 Contingent Fees.

61H1-21.006 Communication with Client of Another Licensee.

61H1-21.007 Procedures for Negotiations for Certain Governmental Audits. (Repealed)

61H1-21.009 Other Business Activities.(Repealed)

61H1-21.001 Independence.

(1) A licensed firm shall not express an opinion on financial statements (as that term is defined in the Standards for Independence) of an enterprise or on the reliability of an assertion by one party for use by another (third) party unless the firm is independent with respect to such enterprise or the party making the assertion. A licensed firm is also precluded from expressing such an opinion if the firm is aware that an individual in the firm is not independent and that individual is a covered licensee or is otherwise required to be independent. A licensed individual shall not express such an opinion unless the individual is independent with respect to such enterprise or the party making the assertion. A licensed individual is also precluded from expressing such an opinion if he or she is aware that an individual in the firm is not independent and that individual is a covered licensee or is otherwise required to be independent. All covered licensees and all other individuals who are required to be independent are required to disclose to the firm that they are not independent prior to the issuance of such an opinion; failure to do so is a violation of this rule. All firms are required to adopt appropriate policies to implement the disclosure requirement and to monitor compliance therewith.

(2) In order to delineate the standards against which a licensee's independence or lack thereof is to be judged, the Board has created a document entitled "Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida" (effective 5-1-2003, revised 12-31-2004) (hereinafter "Standards for Independence") which document is hereby incorporated by reference in this Rule. The standards contained in the "Standards for Independence" are

similar to those contained in the Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants.

(3) In order to be considered independent a licensee must comply with the requirements set out in the "Standards for Independence" and the requirements of this rule.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 12-4-79, Amended 2-3-81, 10-28-85, Formerly 21A-21.01, Amended 10-20-86, Formerly 21A-21.001, Amended 5-21-03, 1-31-05.

61H1-21.002 Integrity and Objectivity.

A certified public accountant shall not knowingly misrepresent facts, and, when engaged in the practice of public accounting, shall not subordinate his judgment to others including but not limited to clients, employers or other third parties. In tax practice, a licensee may resolve doubt in favor of his client as long as there is reasonable support for his position.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 12-4-79, Formerly 21A-21.02, Amended 6-4-86, Formerly 21A-21.02, 21A-21.002.

61H1-21.003 Commissions or Referral Fees.

(1) A CPA shall not pay or accept a commission or referral fee in connection with the sale of a product or referral of any services as defined in Section 473.302(7)(a), F.S., or prohibited to non-CPAs as listed in Section 473.322, F.S. These services include:

(a) Audit, review or compilation services.

(b) Services for any prospective financial data including forecasts or projections.

(c) Any special procedures engagement resulting in an expression of an opinion when the services fall within the definitions as set forth in Section 473.302(7)(a) and Section 473.322, F.S.

(2) The CPA must have an engagement letter signed by the client prior to beginning any engagement for which the CPA will receive a commission. The letter must include complete details of the financial arrangements involving compensation for the services rendered.

(3) The CPA must hold appropriate licenses as required.

(4) If the CPA is not independent as described in Rule 61H1-21.001, F.A.C., it must be disclosed in the engagement letter. However, if the only reason for not being independent is the fact that the Certified Public Accountant is being compensated by a commission or contingent fee then the lack of independence does not have to be disclosed.

Specific Authority 473.304, 473.3205 FS. Law Implemented 473.3205 FS. History--New 12-4-79, Formerly 21A-21.03, Amended 3-28-89, Formerly 21A-21.003, Amended 2-23-98, 8-16-99.

61H1-21.005 Contingent Fees.

(1) A licensee shall not accept a fee contingent upon the findings or results of such services if the service is of the type for which a commission or referral fee could not be accepted (See Rule 61H1-21.003, F.A.C.).

(2) A licensee shall not accept a contingent fee for tax filings with the federal, state, or local government unless the findings are those of the tax authorities and not those of the licensee. Unless the licensee has specific reason to know that the filing will be reviewed in detail by the taxing authorities, the findings will be presumed to be those of the licensee and a contingent fee is not permissible. An original or amended federal tax return or a claim for refund cannot be prepared for a contingent fee since the findings are not considered to be those of the taxing authority. If the taxing authority has begun an audit, any findings will be considered those of the taxing authority and a contingent fee may be accepted. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for the purposes of this rule. However, a licensee's fee may vary depending, for example, on the complexity of the service rendered.

Specific Authority 473.304, 473.319 FS., s. 2, Chapter 97-35, Laws of Florida. Law Implemented 473.319 FS., s. 2, Chapter 97-35, Laws of Florida. History--New 12-4-79, Formerly 21A-21.05, 21A-21.005, Amended 11-30-93, 2-23-98.

61H1-21.006 Communication with Client of Another Licensee.

If a client of one licensee requests a second licensee to provide professional advice on accounting or auditing matters in connection with an expression of opinion, the second licensee must consult with the first licensee, after obtaining the client's consent, to make certain that the (the second licensee) is aware of all the relevant facts.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 12-4-79, Amended 2-3-81, Formerly 21A-21.06, 21A-21.006.

CHAPTER 61H1-22 COMPETENCE AND TECHNICAL STANDARDS

61H1-22.001	Competence (General Standards).
61H1-22.002	Auditing Standards.
61H1-22.003	Accounting Principles.
61H1-22.004	Standards for Accounting and Review Services.
61H1-22.005	Prospective Financial Statements.
61H1-22.006	Governmental Accounting Standards.
61H1-22.007	Governmental Auditing Standards.
61H1-22.008	Standards for Local Governmental Audits.
61H1-22.0085	Standards for Management Advisory Services.
61H1-22.0086	Standards for Tax Practice.
61H1-22.009	Standards for Attestation Engagement.
61H1-22.010	Standards for Personal Financial Planning.
61H1-22.011	Standards for Business Valuations.
61H1-22.012	Standards for Assembled Financial Statements.

61H1-22.001 Competence (General Standards).

A licensee shall comply with the following general standards and must justify any departures therefrom:

(1) Professional competence. A licensee shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence. A CPA must be in charge of all public accounting services performed by the firm.

(2) Due professional care. A licensee shall exercise due professional care in the performance of an engagement.

(3) Planning and supervision. A licensee shall adequately plan and supervise an engagement.

(4) Sufficient relevant data. A licensee shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-22.01, 21A-22.001, Amended 12-30-97.

61H1-22.002 Auditing Standards.

A licensee shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent certified public accountant unless he has complied with the applicable generally accepted auditing standards. Statements on Auditing Standards as published by the American Institute of CPAs, are for purposes of this rule, deemed and construed to be interpretations of generally accepted auditing standards, and departures from such statements must be justified by those who do not follow them.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Formerly 21A-22.02, 21A-22.002.

61H1-22.003 Accounting Principles.

A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from any such principle which has a material effect on the statements taken as a whole, unless he can demonstrate that due to unusual circumstances that financial statements would otherwise have been misleading. In such cases his report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-22.03, 21A-22.003.

61H1-22.004 Standards for Accounting and Review Services.

Licensees performing accounting services in connection with a review or compilation of financial statements shall comply with Statements on Standards for Accounting and Review Services as published by the American Institute of Certified Public Accountants. Departures from such Standards must be justified by those who do not follow them.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 12-4-79, Formerly 21A-22.04, 21A-22.004

61H1-22.005 Prospective Financial Statements.

A licensee shall not permit his name to be used in conjunction with prospective financial statements unless he has complied with standards for Accountants Services on Prospective Financial Statements published by the American Institute of Certified Public Accountants. Departures from such standards must be justified by those who do not follow them.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 12-4-79, Formerly 21A-22.05, Amended 3-28-89, Former y 21A-22.005.

61H1-22.006 Governmental Accounting Standards.

A licensee shall not permit his name to be associated with financial statements of units of government unless he has complied with standards for governmental accounting. Statements on Governmental Accounting issued by the Governmental Accounting Standards Board are, for the purposes of this rule, deemed and construed to be interpretations of generally accepted governmental accounting standards and departure from such statements must be justified by those who do not follow them.

Specific Authority 473.304, 473.315, Chapter 79-202, Laws of Florida. Law Implemented 473.315, Chapter 79-202, Laws of Florida. History--New 9-23-86, Formerly 21A-22.006.

61H1-22.007 Governmental Auditing Standards.

A licensee shall not permit his name to be associated with financial statements of units of government unless he has complied with standards for governmental auditing. Standards for Audits of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States are, for purposes of this rule, deemed and construed to be interpretations of generally accepted governmental auditing standards and departure from such standards must be justified by those who do not follow them.

Specific Authority 473.304, 473.315, Chapter 79-202, Laws of Florida. Law Implemented 473.315, Chapter 79-202, Laws of Florida. History--New 9-23-86, Formerly 21A-22.007.

61H1-22.008 Standards for Local Governmental Audits.

Licensees performing accounting services in connection with Local Governmental Entity Audits required to be filed with the Auditor General of the State of Florida shall comply with the standards set forth in Rule Chapter 10.550-10.559, Rules of the Auditor General of the State of Florida. Departures from such standards must be justified by those who do not follow them.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 10-22-86, Amended 5-9-88, Formerly 21A-22.008, Amended 9-30-97.

61H1-22.0085 Standards for Management Advisory Services.

Licensees performing management advisory services shall comply with the Statement on Standards for Management Advisory Services as published by the American Institute of CPAs. Departures from such statements must be justified by those who do not follow them.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 5-20-91, Formerly 21A-22.0085, Amended 9-30-97.

61H1-22.0086 Standards for Tax Practice.

Licensees performing tax services shall comply with the Statement on Responsibilities in Tax Practice as published by the American Institute of CPAs.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 5-20-91, Formerly 21A-22.0086, Amended 9-30-97.

61H1-22.009 Standards for Attestation Engagement.

A licensee shall not permit his name to be used in conjunction with any applicable attestation engagement unless he has complied with "Standards for Attestation Engagements" as published by the American Institute of Certified Public Accountants specified in Rule 61H1-20.0099.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History--New 4-16-89, Formerly 21A-22.009, Amended 10-16-96.

61H1-22.010 Standards for Personal Financial Planning.

Licensees performing personal financial planning services for clients shall comply with the "Statement on Responsibilities in Personal Financial Planning," as published by the American Institute of CPAs.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 11-2-95, Amended 2-18-96, 9-30-97.

61H1-22.011 Standards for Business Valuations.

Licensees performing business valuations for clients shall comply with "Consulting Services Practice Aid 93-3, Conducting a Valuation of A Closely Held Business," published by the American Institute of CPAs. The rule does not encompass consulting engagements wherein a licensee provides written or oral advisory services in which the client is informed in writing that the services provided were not performed in accordance with Consulting Services Practice Aid 93-3 established by the AICPA.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 11-2-95, Amended 2-18-96, 9-30-97.

61H1-22.012 Standards for Assembled Financial Statements.

Certified Public Accountants involved with offering to perform or performing assembled financial statements must comply with the provisions of 61H1-20.0053, F.A.C.

Specific Authority 473.304, 473.315 FS. Law Implemented ss. 1, 12, Ch. 98-340, Laws of Florida. History—New 10-28-98.

CHAPTER 61H1-23 RESPONSIBILITIES TO CLIENTS

61H1-23.001 Confidential Client Information.

61H1-23.002 Records Disposition Responsibility.

61H1-23.001 Confidential Client Information.

A certified public accountant shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. This rule shall not be construed to relieve a certified public accountant of his obligation under Rules 61H1-22.002 and 22.003 or to contravene or contradict any of the provisions of 473, F.S. Furthermore, this rule shall not prohibit a confidential review of a certified public accountant's professional practice as a part of a quality review program.

Specific Authority 473.304, 473.315, 473.316 FS. Law Implemented 473.315, 473.316 FS. History—New 12-4-79, Formerly 21A-23.01, 21A-23.001.

61H1-23.002 Records Disposition Responsibility.

(1) A licensee shall furnish to a client or former client within a reasonable time after request of the document the following if they are in the licensee's possession or control at the time of the request: Any accounting or other records belonging to the client which the licensee may have had occasion to remove from client's premises, or to receive for the client's account, including records prepared as part of the service to the client which would be needed to reconcile to the financial statements or tax return prepared and issued by the certified public accountant. If the tax return or financial statement has not been issued, the certified public accountant must only return records received from the client, but this shall not preclude the licensee from making copies of such documents when same form the basis of work done by the licensee.

(2) This rule shall not preclude a licensee from making reasonable charges for costs incurred. A licensee shall not withhold those items contemplated above under any circumstances following a demand for same from the client.

(3) Provisions of this rule apply to Licensed Audit Firms and to all Certified Public Accountants practicing public accounting.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315, 473.318 FS. History—New 12-4-79, Amended 12-11-83, Formerly 21A-23.02, Amended 9-1-87, Formerly 21A-23.002, Amended 10-28-98.

CHAPTER 61H1-24 ADVERTISING

61H1-24.001 Advertising.

61H1-24.002 Solicitation.

61H1-24.003 Competitive Negotiation. (Repealed)

61H1-24.001 Advertising.

(1) No licensee shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading, if it, among other things:

- (a) Contains a misrepresentation of facts; or
- (b) Makes only a partial disclosure of relevant facts; or
- (c) Creates false or unjustified expectations of beneficial assistance; or
- (d) Appeals primarily to a layperson's fears, ignorance, or anxieties regarding his state of financial well-being; or
- (e) Contains any representation or claims, as to which the licensee, referred to in the advertising, does not expect to perform; or
- (f) Contains any other representation, statement, or claim which misleads or deceives; or
- (g) A licensee may state or imply that the licensee has received any bona fide formal recognition or attainment in conjunction with the CPA licensure designation so long as contained within the advertisement and in the immediate proximity of the CPA licensure designation is found a statement that the CPA licensure designation is regulated by the State of Florida. In addition, the advertisement must use a mark, such as an asterisk, to tie the CPA designation to the statement. In the event that a licensee uses the term "specialty" or "specialist" or any other term tending to indicate an advanced standing in any aspect of the practice of public accountancy, in any advertisement or offering to the public, the advertisement must state that the use of the term is a self-designation and is not sanctioned by the state or federal government; or

(h) Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(2) As used in 473.302(6), F.S., and the rules of the Board, the terms "advertisement," "advertising" and "advertising as a part of a licensee's business activities" shall mean:

(a) Any statements, oral or written, disseminated to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling public accounting services, or offering to perform public accounting services, or including members of the public to enter into any obligation relating to such public accounting services. For purposes of this rule, oral or written statements include:

- 1. Business cards
- 2. Letterhead
- 3. Signs
- 4. Listings in telephone and other media or communication directories
- 5. Display of certificate or license from this or any other state
- 6. Business reports
- 7. Transmittal letters or other written communication issued or associated with accompanying financial statements
- 8. Brochures
- 9. Forms filed with state and federal regulatory agencies
- 10. Press releases
- 11. Paid promotional listing in any media
- 12. Display of membership in CPA associations
- 13. Listings in professional directories
- 14. Presentation during court proceedings

(b) "Advertisement," "advertising" and "advertising as a part of a licensee's business activities" as defined terms by this rule does not include:

- 1. Verbal statements in a social context
- 2. Use of the designation by faculty members in an educational institution when functioning in the capacity of a faculty member, and
- 3. Use of the designation by authors when used only for identification as authors of books, articles or other publications, provided that such publications, do not offer the performance of services or the sale of products (other than books, articles or other publications).

Specific Authority 473.304, 473.323 FS. Law Implemented 473.323(1)(f) FS. History--New 12-4-79, Amended 2-3-81, 12-29-83, Formerly 21A-24.01, Amended 5-20-91, Formerly 21A-24.001, Amended 2-12-95, 5-7-96, 10-8-97.

61H1-24.002 Solicitation.

(1) A licensee may respond to any request for a proposal to provide public accounting services and may provide such services to those requesting same.

(2) A licensee may solicit an engagement to perform public accounting services provided the licensee complies with 61H1-24.001 and provided the licensee does not use coercion, duress, compulsion, intimidation, threats, or conduct that is overreaching, or vexatious or harassing.

(3) Any form of written communication to a potential client, invited or not, is permissible under this rule provided such communication conforms to the advertising guidelines of Rule 61H1-24.001.

Specific Authority 473.304, 473.323 FS. Law Implemented 473.323 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-24.02, 21A-24.002, Amended 11-30-93.

CHAPTER 61H1-25 RESPONSIBILITY FOR OTHER PERSONS

61H1-25.001 Responsibility for Other Persons.

61H1-25.001 Responsibility for Other Persons.

A licensee shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the licensee would place him in violation of Chapters 455 and 473, F.S., or rules promulgated thereto.

Specific Authority 473.304, 473.323 FS. Law Implemented 473.322, 473.323 FS. History—New 12-4-79, Formerly 21A-25.01, 21A-25.001.

CHAPTER 61H1-26 NAMES, TERMS, BRANCH OFFICES

61H1-26.001 Form of Practice and Name-Shared Office Space.

61H1-26.002 Minimum Capitalization or Adequate Public Liability Insurance for Public Accounting Corporations, Limited Liability Companies (LLCs) and Partnerships (LLPs).

61H1-26.003 Licensure of Firm Names.

61H1-26.004 Licensure of Changes by Firms.

61H1-26.005 Notification of Address Change.

61H1-26.001 Form of Practice and Name-Shared Office Space.

(1) A certified public accountant may practice public accounting, whether as an owner or employee, only in the form of a proprietorship, a partnership or a corporation, or a limited liability company. A certified public accountant shall not allow any person to practice in his name that is not a partner or shareholder with him or in his employ. A certified public accountant shall not practice under a name which is misleading or deceptive as to the legal form of the firm or as to persons who are partners, or shareholders of the firm or as to any other matter. In this regard:

(a) A licensee may practice public accounting under a fictitious name which is not misleading or deceptive as to the persons who are sole proprietors, partners, or shareholders; and

(b) A firm name may include the names of retired or deceased partners or shareholders or members who were active partners or shareholders or members of the entity. This provision permits a firm, in the same line of succession, to change from one form of business to another and continue to use the names of retired or deceased partners, shareholders or members.

(c) Use of the term “and Company” or “and Associates” requires at least one other fully employed licensee or non-CPA owner other than those named in the firm name; however, this rule does not preclude a licensee initially meeting this requirement from using the above-mentioned terms if the licensee subsequently does not fully employ at least one licensee other than those named in the firm name.

(d) A firm may use the term “Certified Public Accountants” in the firm's name if all owners are CPAs. If there are non-CPA owners, the firm may use the terms “CPA Firm” “CPAs and Associates” or “Certified Public Accountants and Associates” provided the firm has more than one CPA. Further, a CPA firm with non-CPA owners may not use the term Certified Public Accountants without indicating there are other owners such as Associates or Consultants.

(2) The term “certified public accountant(s)” or the abbreviation “CPAs” must appear with the name of a certified public accountant when used in connection with an expression of opinion.

(3) Certified Public Accountants may share office facilities provided there is adequate disclosure that would enable a reasonable person to determine the practice is not associated with the profession or occupation not regulated by the Board, such as written agreements, signs, etc.

Specific Authority 473.304, 473.3101, 473.321 FS. Law Implemented 473.3101, 473.321 FS. History—New 12-4-79, Amended 11-7-84, 10-28-85, Formerly 21A-26.01, Amended 10-20-86, 12-28-89, 7-1-91, 1-7-93, Formerly 21A-26.001, Amended 11-30-93, 12-30-97, 8-16-99, 9-20-00.

61H1-26.002 Minimum Capitalization or Adequate Public Liability Insurance for Public Accounting Corporations, Limited Liability Companies (LLCs) and Partnerships (LLPs).

A public accounting corporation, LLC, or LLP shall not engage in the practice of public accounting in this state unless:

(1) Assets in excess of liabilities and professional liability insurance combined are at least equal to \$50,000 per shareholder, officer, member, or partner and any Florida licensed CPA to a maximum of \$2,000,000 or

(2) It has an irrevocable letter of credit which meets the following criteria:

(a) The responsibility for repayment of any sums disbursed under the letter of credit is not an obligation of the CPA firm, its owners, or any entity affiliated with the CPA firm;

(b) The letter of credit contains an “evergreen clause,” which automatically renews the letter of credit unless the issuer of the letter of credit notifies the CPA firm and the Board within sixty (60) days of the decision not to renew; and

(c) The letter of credit is issued by a financial institution authorized to do so under applicable state or federal banking laws; or

(3) The corporation, each shareholder, and each officer who has authority over the practice of public accountancy, the LLC or the limited liability company and each member of the LLC, or the LLP and each partner have executed the waiver of limitation on liability approved by the Board which must be set forth as follows:

WAIVER ON LIMITATION OF LIABILITY

The shareholders, officers, members, or partners of ____ (Name of Firm), do jointly and severally covenant and agree that they will pay any award or judgment arising out of any claim the basis of which is grounded upon an allegation of negligence, incompetence, misconduct, fraud or deceit in the firm's or its owners', officers', members', or employees' practice of public accounting as soon as the same shall become payable regardless of any limitation on liability provided by Chapter 621 and Chapter 608, and Chapter 620, F.S. (1985). Unless executed by a partnership and its partners, the members intend this agreement as a mutual covenant of assumption and not as a partnership, but should any court of competent jurisdiction construe same to be a partnership then it is the intention of the parties that such partnership be limited in scope to the uses for which this contract is executed and no other. Any individual who, subsequent to the date of this instrument, becomes a shareholder, officer, member, or partner in _____ (Name of Firm), shall immediately become a party to this waiver and be bound to the conditions thereof. Said shareholder, officer, member, or partner shall execute an amended Waiver on Limitation of Liability which shall become a part of the original Waiver on Limitation of Liability. We the undersigned shareholders, officers, members, or partners in _____ (Name of Firm), do hereunto set our hands and seals to certify our acceptance of the Waiver on Limitation of Liability dated this _____ day of _____, 19____.

(Signatures of all shareholders, officers, members, or partners)

(4) For purposes of subsection 61H1-26.002(1), F.A.C., financial statements prepared to substantiate the excess of assets over liabilities must be submitted to the Board with the application for licensure. These Financial statements must be prepared in accordance with Generally Accepted Accounting Principles and Work-in-Process may be considered as an unbilled receivable together with an appropriate evaluation allowance.

Specific Authority 473.304, 473.309 FS. Law Implemented 473.309 FS. History—New 12-4-79, Formerly 21A-26.02, Amended 10-20-86, Formerly 21A-26.002, Amended 11-30-93, 5-23-94, 6-10-96, 10-6-96, 12-30-97, 9-21-00.

61H1-26.003 Licensure of Firm Names.

Every firm practicing public accounting in Florida shall be certified for licensure by the Board on a biennial basis, and shall furnish its firm name, addresses and telephone numbers of main office and any branch offices in Florida as well as the names of all licensed professional staff and all non-licensed owners. The firm must also disclose whether any non-CPA owners have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction and judgment or settlements of civil lawsuits (excluding domestic matters), or having been acted against including denial of licensure by any regulatory agency by a court or regulatory agency and any other matters which show a lack of good moral character. (Good moral Character is defined in Section 473.306(4)(a) F.S.).

Specific Authority 473.304, 473.3101 FS. Law Implemented 473.3101 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-26.03, Amended 6-4-86, Formerly 21A-26.003, Amended 2-3-94, 12-30-97.

61H1-26.004 Licensure of Changes by Firms.

(1) A firm licensed pursuant to Rule 61H1-26.003, F.A.C., shall file a written notification with the Department within thirty (30) days after the occurrence of any of the following events:

(a) The admission or addition of a non-CPA co-partner, shareholder or member in any Florida office, including whether any non-CPA co-partners, shareholders or members have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction; judgement or settlements or civil lawsuits (excluding domestic matters); having been acted against, including denial of licensure, by any regulatory agency or by a court; and any other matters which show a lack of good moral character as defined in Section 473.306(4)(a), F.S.;

(b) The admission or addition of a CPA co-partner, shareholder or member in any Florida office, including whether any CPA co-partners, shareholders or members have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction; judgment or settlements of civil lawsuits (excluding domestic matters); having the right to practice acted against, including denial of licensure, by the Securities Exchange Commission (SEC), Internal Revenue Service (IRS), or any other regulatory agency or court; and any other matters which show a lack of good moral character as defined in Section 473.306(4)(a), F.S.;

(c) The retirement or death of a co-partner, shareholder or member in any Florida office;

(d) A change in the name of the partnership, corporation or limited liability company;

(e) The termination of the partnership, corporation or limited liability company.

(f) When the firm or any existing CPA or Non-CPA co-partner, shareholder or member has been the recipient of a conviction or finding of guilt, regardless of adjudication, of a crime in any jurisdiction; has been the subject of a judgment or settlements of a civil lawsuit (excluding domestic matters); has had the right to practice public accountancy acted against, including denial of licensure, by the Securities Exchange Commission (SEC), Internal Revenue Service (IRS), or any other regulatory agency or court; and any other matters which show a lack of good moral character as defined in Section 473.306(4)(a), F.S.

(2) A firm licensed pursuant to Rule 61H1-26.003, F.A.C., shall file with the Division of Certified Public Accounting by March 1 every two years a list of all co-partners, shareholders or members in the U.S. as of December 31, indicating those that are non-CPAs.

(3) In the event of the formation of a new partnership, corporation or limited liability company or a change in the name of a partnership, corporation or limited liability company, such partnership, corporation or limited liability company shall, within thirty (30) days of the event, become certified for licensure by the Board in accordance with Rule 61H1-26.003, F.A.C., and pay the license fee required by subsections 61H1-31.001(5) and (6), F.A.C.

Specific Authority 473.304, 473.3101 FS. Law Implemented 473.3101 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-26.04, Amended 6-4-86, Formerly 21A-26.004, Amended 11-3-97, 7-16-98, 1-31-05.

61H1-26.005 Notification of Address Change.

(1) All licensees are required to have their correct street address on file with the Board office. A post office box may be used for a mailing address, but it must be in addition to the street address.

(2) Any time that a licensee changes their street address or mailing address, they must notify the Board office in writing within thirty days.

(3) If the licensee does not receive written confirmation that the Board's records have been changed then the licensee is put on notice that the Board did not receive the change notice and it is the licensee's responsibility to send another notice.

Specific Authority 473.304 FS. Law Implemented 473.304 FS. History—New 12-2-92, Formerly 21A-26.005.

CHAPTER 61H1-27 EDUCATIONAL AND EXPERIENCE REQUIREMENTS

- 61H1-27.001 College or University Requirements.
- 61H1-27.002 Concentrations in Accounting and Business.
- 61H1-27.003 Additional One Year Accounting Course Acceptable in Lieu of One Year of Employment.
(Repealed)
- 61H1-27.004 One Year of Employment. (Repealed)
- 61H1-27.005 Educational Advisory Committee.

61H1-27.001 College or University Requirements.

(1) An accredited college or university within the meaning of Section 473.306, F.S., is a four-year degree granting college or university in the State University System or other four-year degree granting educational institution accredited at the time applicant's degree was received by virtue of membership in one of the following regional accrediting agencies so listed:

- (a) Middle States Association of Colleges and Secondary Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Secondary Schools;
- (d) Northwest Association of Schools and Colleges;
- (e) Southern Association of Colleges and Schools;
- (f) Western Association of Schools and Colleges;
- (g) Association of Independent Colleges and Schools. After August 2, 1992 the Association of Independent Colleges and Schools (AICS) will no longer be deemed an acceptable accrediting agency, unless the college or school accredited by the AICS is regulated by the Commission for Independent Education and exempted from licensure by the CIE under the provisions of Section 246.085, F.S.
- (h) Canadian, Mexican, Ireland, and Australian academic accounting programs approved by the provincial education bodies or the equivalent educational accreditation body for that country.

(2) A listing of accredited colleges and universities as recognized by the Board is contained in the "Accredited Institutions of Post-secondary Education"; published by the American Council on Education for the Council on Post-secondary Accreditation as published for the time period the candidate attended the institutions. However, an applicant whose degree was received from a non-accredited college or university may qualify under the provisions of subsection (3).

(3) If an institution was not accredited at the time an applicant's degree was received but was so accredited at the time his application was filed with the Board, the institution will be deemed to be accredited for the purpose of subsections (1) and (2) provided it:

- (a) Certifies that the applicant's total educational program would qualify him for graduation with a baccalaureate degree during the time the institution has been accredited, and
- (b) Furnishes the Board satisfactory proof, including college catalogue course numbers and descriptions, that the pre accrediting courses used to qualify applicant as an accounting major can be matched with substantially equivalent post accrediting courses.

(4) If an applicant's degree was received at an accredited college or university as defined in subsections 61H1-27.001(2) and 61H1-27.001(3), F.A.C., but the educational program used to qualify him as an accounting major included courses taken at either two-year or four-year non accredited institutions either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received provided it either has accepted by virtue of inclusion in an official transcript, or will accept by certification to the Board, such courses for credit toward graduation.

(5)(a) A graduate of a four-year degree granting institution not accredited at the time the applicant's degree was received or at the time of filing application will be deemed to be a graduate of a four-year accredited college or university course provided an accredited college or university as defined by subsections 61H1-27.001(1) and (2), F.A.C., accepts applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester or 22 quarter hours, or the equivalent, in post-baccalaureate education at the accredited institution of which at least 9 semester or 13 quarter hours, including at least 3 semester or 4 quarter hours in taxation; or the equivalent, shall be in accounting; and the accredited college or university verifies that the applicant is in good standing for continuation in the graduate program (or has maintained a grade point average in these courses that is necessary for graduation). The advanced subjects completed to qualify under this rule may not be used to satisfy the requirements of Rules 61H1-27.002 and 61H1-27.003, F.A.C. Elementary accounting

subjects, or courses equivalent to elementary accounting, cannot be used to satisfy the requirements of this rule. Elementary accounting subjects include principles of financial and managerial accounting courses even if they are covered in a three-course sequence, are titled “introductory,” “fundamentals,” or “principles,” and even if they are offered at the graduate level.

(b) A graduate seeking approval under this subsection shall provide at his own expense to the Board, a complete course by course evaluation of any foreign transcripts by an evaluation service as approved by the Board.

Specific Authority 473.304, 473.306 FS. Law Implemented 473.306 FS. History--New 12-4-79, Amended 2-3-81, 3-21-84, 10-28-85, Formerly 21A-27.01, Amended 4-8-86, 9-1-87, 8-25-88, 12-28-89, 3-29-90, Formerly 21A-27.001, Amended 1-11-95, 5-11-03, 3-21-05, 4-9-06.

61H1-27.002 Concentrations in Accounting and Business.

(1) The purposes of Section 473.306, F.S., if application for the Uniform CPA Examination is made prior to August 2, 1983, an applicant must have a baccalaureate degree from an accredited college or university with a major in accounting, or its equivalent, with a concentration in accounting and business subjects. A concentration in accounting and business is defined as an educational program that includes at least 18 semester hours or 27 quarter hours, or the equivalent, in accounting education above elementary (principles of) accounting and 27 semester or 40 quarter hours, or the equivalent, in general business education. In order to meet the provisions of Section 473.306, F.S., the application must be filed, completed and approved and show on its face that all educational and other requirements have been met prior to August 2, 1983.

(2) For purposes of Section 473.306, F.S., if application is made after August 1, 1983, an applicant must have at least a baccalaureate degree, or its equivalent, from an accredited college or university with a major in accounting, or its equivalent, plus at least 30 semester hours or 45 quarter hours, or the equivalent from an accredited college or university in excess of those required for the baccalaureate degree including a total education program with a concentration in accounting and business as follows:

(a) 36 semester or 54 quarter hours in accounting education above the elementary level which shall include coverage of auditing, cost and managerial accounting, financial accounting, accounting information systems, and taxation. Not more than 3 semester or 4 quarter hours may be internship programs which may be applied to the 36 hours in accounting (internship courses must be taken in conjunction with other traditional coursework at an institution and must appear on the transcript). Further, any remaining internship credit if otherwise acceptable would be applied to the general business requirement, and

(b) 39 semester or 58 quarter hours in general business education which shall include not less than the equivalent of 6 semester or 8 quarter hours in business law courses which include coverage of the uniform commercial code, contracts and torts. Vocational and clerical type courses will not count either toward the accounting requirement set forth in subsection 61H1-27.002(2), F.A.C., or this general business education requirement. Specialized industry courses will be acceptable as general business courses but not as accounting courses unless as defined in subsection 61H1-27.002(2), F.A.C., unless they have an accounting prefix, further such courses in order to qualify must be certified by the chairman of the school or college’s accounting department as qualifying for general business credit. Written or oral communication courses will qualify for the general business requirement if they have a business or accounting prefix or if they are reflected in the catalog in the school or college as relating directly to the school or college’s business or accounting requirements. A maximum of 9 semester hours (13 quarter hours) of computer courses and 6 upper division semester hours (8 quarter hours) of statistics courses will be accepted for purposes of meeting the general business requirement.

(3) For purposes of this rule, upper division accounting hours other than elementary above the minimum requirement may be substituted for general business hours. Elementary accounting subjects shall not be accepted as general business education. Elementary accounting subjects include principles of financial and managerial accounting courses even if they are covered in a three course sequence, are titled “introductory,” “fundamentals” or “principles” and even if they are offered at the graduate level. All accounting courses and not less than 21 semester hours of general business courses must be at the upper division level. For the purpose of paragraph 61H1-27.002(2)(b), F.A.C., all general business courses, including accounting courses in excess of the 36 hours required, must be taken at the upper division level, except for Introductory Macro and Micro Economics, three semester hours of the six required in Business Law, Introductory Statistics, Introduction to Computer Information Systems, and any written

or oral communication course described in paragraph 61H1-27.002(2)(b), F.A.C. Lower level general business courses, other than those listed above, posted to transcripts after August 31, 1989 will not count. Standardized tests such as CLEP courses are not acceptable for accounting or general business courses.

(a) Upper division, as used in Rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.)

(b) If an applicant has taken a course at the lower division at a senior institution, and that institution has reclassified the course to the upper division at the time of application to Florida, the course will be deemed upper division for the purpose of Rule 61H1-27.002, F.A.C.

(4) Re-applicants whose original application for the CPA examination was approved prior to August 2, 1983 may elect to satisfy subsection 61H1-27.002(1), F.A.C.

(5) For purposes of subsection 61H1-27.002(2), F.A.C., and Section 473.306, F.S., a baccalaureate degree will not be considered as meeting the statutory requirement for a major in accounting or its equivalent unless all credit hours accepted by the college or university as part of the degree requirement are listed as courses in the catalogues of all institutions attended.

(6) If an applicant takes duplicate courses, only one of these courses will be counted. For purposes of this rule, all CPA Examination Review courses will be deemed to be duplicate courses.

(a) Courses will be considered duplicated if they cover a substantially equivalent professional area of knowledge even if separated by a span of time and even if some of the professional, technical and/or legal issues have been changed or modified.

(b) Regarding CPA Review courses, by definition these courses cover material already studied. Accordingly, no exception will be made to consider a CPA Review course non-duplicative, regardless of statements by applicants, professors, or academic administrators that additional topics are covered or the material covered only superficially in prior courses is covered in more detail in a “review” course.

(7) Individuals who have graduated from accounting programs approved by the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy and whose educational degrees are from accredited institutions as set forth in subsection 61H1-27.001(1), F.A.C., shall be deemed to have met the requirements set forth in subsections 61H1-27.002(1)-(3), F.A.C.

Specific Authority 473.304, 473.306 FS. Law Implemented 473.304, 473.306 FS. History—New 12-4-79, Amended 2-3-81, 8-1-83, 3-21-84, 6-10-84, 6-5-85, 10-28-85, Formerly 21A-27.02, Amended 5-22-88, 3-21-89, 5-20-91, 12-2-92, Formerly 21A-27.002, Amended 11-2-95, 11-3-97, 1-31-05.

61H1-27.005 Educational Advisory Committee.

The Board shall appoint an Educational Advisory Committee which shall be composed of one (1) member of the Board, two (2) licensees in public practice, and four (4) academicians on faculties of universities within the State of Florida. The Board member shall be appointed by the Chairman and serve at his or her pleasure. The other members of the Committee will be selected by the Chairman of the Committee for terms of two (2) years, with the potential for reappointment for one (1) additional two (2) year term. Any member appointed to fill a vacated, partial term, can serve two (2) full terms. In addition, the Committee shall consist of expert staff retained by the Department of Business and Professional Regulation. Said staff shall be individuals who have knowledge and experience with educational curricula and national accreditation standards for accounting and business programs. The Educational Advisory Committee shall assist the Board and Board staff with any educational matters or issues brought to the Committee, including but not limited to questions regarding academic qualification for applications for examination and licensure by endorsement. The Committee may also bring educational issues it deems of importance to the Board.

Specific Authority 120.53(1), 473.304 FS. Law Implemented 120.53(1), 473.306 FS. History—New 7-7-85, Formerly 21A-27.05, Amended 12-2-92, Formerly 21A-27.005.

CHAPTER 61H1-28 EXAMINATIONS

61H1-28.001 Examination. (Repealed)

61H1-28.0011 Examinations.

61H1-28.005 Number of Sitzings, Passing Grade and Granting of Credit, Effective Dates, Release of Grades and Completion of Examination. (Repealed)

- 61H1-28.0052 Number of Sitzings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.
- 61H1-28.006 Examination Credit from Other States. (Repealed)
- 61H1-28.0061 Examination Credit from Other States.
- 61H1-28.007 Law and Rules Examination.
- 61H1-28.008 State of Florida CPA Examination Security Requirements. (Repealed)

61H1-28.0011 Examinations.

(1) The Board adopts the Uniform CPA Examination “CPA Examination” prepared by the Board of Examiners of the American Institute of Certified Public Accountants and the examination approved by the Board on Chapters 455 and 473, F.S., and the related administrative rules “Law and Rules Examination” as its licensure examinations.

(2) As used in Chapter 61H1-28, F.A.C., the following terms are hereby defined:

(a) “Examination window” means a three-month period in which candidates have an opportunity to take the CPA Examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus candidates will be able to test two out of the three months within each examination window.

(b) “Special examination window” means the period from April 5, 2004 to September 30, 2004 during which a candidate may have the opportunity to take the CPA Examination and during which the examination may be available for a period of time more than two months due to the unique circumstances surrounding the initial administration of the CPA Examination. The special examination window shall count as one examination window. During the special examination window a candidate may retake a failed section(s) one time.

(3) For purposes of the Uniform CPA Examination:

(a) A first-time candidate is defined as a candidate who is required to file an application in order to qualify to sit for all sections of an examination.

(b) A re-examination candidate is defined as a candidate who has not received credit for all sections within the time frame allotted, as set out in Rule 61H1-28.0052, F.A.C.

(c) Candidates cannot retake a failed test section(s) in the same examination window.

Specific Authority 455.217(1), 473.304, 473.306 FS. Law Implemented 455.217(1), 473.306 FS. History—New 1-1-04.

61H1-28.0052 Number of Sitzings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

(1) With respect to the CPA Examination:

(a) A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections.

(b) Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all four test sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

(c) For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

(2) A candidate shall be deemed to have passed the CPA Examination when the candidate has been granted credit for all sections of the CPA Examination. Upon certification by the Board to the Department that the applicant has met all licensure requirements as imposed by Chapters 455 and 473, F.S., and the rules promulgated pursuant thereto, the Department shall issue a license to practice public accounting to such individual.

(3) After January 1, 2004, this rule shall be effective for all first-time candidates or re-examination candidates except as provided in subsection (4) herein.

(4) For candidates in conditioned status after the November 2003 CPA Examination the following transition rules shall apply:

(a) Candidates who have attained conditional status as of the effective date of this rule will be allowed a transition period to complete any remaining test sections of the CPA Examination. The transition period shall end upon the exhaustion of either of the following:

1. As of the effective date of this rule, the candidate having sat for the exam for the maximum number of opportunities (that is, examination windows) that the candidate who conditioned under the paper-and-pencil examination had remaining to complete all remaining test sections under the paper-and-pencil examination, or

2. The number of remaining opportunities under the paper-and-pencil examination, multiplied by six months but limited by the number of sittings remaining under the paper-and-pencil examination. Thus, for example, if a candidate has two remaining sittings under the paper-and-pencil examination then that candidate will have one year to complete the CPA Examination but may only sit during two of the examination windows available during that year.

(b) If a previously conditioned candidate does not pass all remaining test sections during the transition period, conditional credits earned under the paper-and-pencil CPA Examination will expire and the candidate will lose credit for the test sections earned under the paper-and-pencil CPA Examination. However, any test section(s) passed during the transition period is subject to the retention provisions of the computer-based CPA Examination as indicated in subsection (1) above, except that a previously conditioned candidate will not lose conditional credit for a test section of the computer-based CPA Examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the test section is passed, until the end of that candidate's transition period.

(5) Translation of subjects passed on the pen and paper CPA Examination to sections on the computer-based CPA Examinations shall be as follows:

Paper-Based Examination Computer-Based Examination

Auditing & Attestation

Financial Accounting & Reporting (FARE)

Accounting & Reporting (ARE) Regulation

Business Law & Professional Business Environment & Concepts Responsibilities (LPR)

Specific Authority 455.217(1), 473.304, 473.306 FS. Law Implemented 455.217(1), 473.306 FS. History--New 1-1-04.

61H1-28.0061 Examination Credit from Other States.

Upon application, an individual who has been granted credit by another state for any section on the CPA Examination, the specific examinations for which sections were identical to those offered in Florida, shall receive Florida credit for such out-of-state credit provided similar credit would have been granted in Florida at the time out-of-state credit was granted had the candidate met all the Florida requirements and sat for such examinations in Florida. For purposes of this rule in determining whether to transfer examination credit from another state, the Board shall consider and hold binding the examination requirements in effect in Florida at the time the individual received out-of-state credit. An individual so receiving Florida credit shall be deemed to have been a Florida candidate for such purpose in determining future sittings and credit granting for the remaining section(s). Any person desiring to receive credit under this rule shall file an application with the Department and be certified as eligible to the Department by the Board.

Specific Authority 455.217(1), 473.304, 473.306 FS. Law Implemented 455.217(1), 473.306 FS. History--New 1-1-04

61H1-28.007 Law and Rules Examination.

At the time of application for licensure, the applicant must pass the examination on Chapters 455 and 473, F.S., and related administrative rules approved by the Board. A grade of at least 80 is a passing grade.

Specific Authority 473.304, 473.306 FS. Law Implemented 473.306 FS. History--New 4-8-86, Formerly 21A-28.007.

CHAPTER 61H1-29 LICENSURE BY ENDORSEMENT

61H1-29.002 Temporary License.

61H1-29.0025 Temporary License - Electronic Practice.

61H1-29.003 Experience for Licensure by Endorsement.

61H1-29.004 Licensure by Endorsement; Domiciled.

61H1-29.005 CPA Education/CPE Credit.

61H1-29.002 Temporary License.

(1) Temporary licenses will be required of out-of-state certified public accountants or firms in each instance in which such out-of-state certified public accountants or firms send out-of-state personnel into the state to perform a specific engagement. Applications for temporary licenses must be filed prior to commencement of the engagement. A temporary license shall not be required of a person entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters.

(2) Applications for temporary licenses to fulfill specific engagements shall be in writing directed to the Department on forms prescribed by the Department.

(3) Each application will be accompanied by the statement of the applicant, or if it is a partnership or professional service corporation, by a partner or shareholder of the applicant, to the effect that:

(a) Said work qualifies for a temporary license;

(b) That the applicant is not maintaining a full-time office and staff in the state for the full-time public accounting practice in the state through the use of a temporary license.

(4) The out-of-state certified public accountant shall furnish the Department with the names of all out-of-state personnel coming into the state to fulfill the specific engagement and such other information as required by Chapters 455 and 473, F.S., and rules promulgated pursuant thereto. At the time of such furnishing, the out-of-state certified public accountant shall pay to the Department the sum of \$400 for the first license in a calendar year and \$400 for each additional application in the same calendar year. If the out-of-state certified public accountant desires to substitute personnel or bring additional personnel into the state to fulfill the specific engagement, he shall notify the Department of the names of such substituted personnel or additional personnel as soon as practicable after the substitution or addition.

(5) The Board may, on its own initiative or upon the request of the applicant, conduct a hearing, including the taking of the sworn testimony of the applicant, or a partner, shareholder or employee thereof, in regard to the granting or refusing of a temporary license. Such hearing may be held either prior to or after the granting or refusing of a temporary license.

(6) The fee will not be refunded in the event the application is withdrawn or denied.

(7) An out-of-state certified public accountant who is a resident of Florida may not practice as a certified public account in Florida through the use of temporary licenses, nor may he assume or use the titles or designations "certified public accountant," or "public accountant" or the abbreviation "CPA," or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that he holds an active license under Chapter 473, F.S., nor shall such person attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed unless such person holds an active license under Chapter 473, F.S. This rule shall not prohibit the performance by such persons of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon.

(8) A temporary license may be denied for any one of the following:

(a) The applicant has failed to fully complete required application;

(b) The applicant has committed any of the acts specified by Rule 61H1-36.001, F.A.C., which constitutes grounds for disciplinary action against a licensee.

(9)(a) Any out-of-state certified public accountant or firm who receives a temporary permit during any calendar year is hereby required to submit one audited, one reviewed, and one compiled financial statement at the time the first permit application is made during each calendar year for review by the Board of compliance with the requirements of Section 473.315, F.S., and the rules promulgated thereto.

(b) An out-of-state CPA or firm who seeks to perform a peer review or a quality review on a Florida CPA or firm shall not be required to provide the information set forth in paragraph 61H1-29.002(9)(a), F.A.C., as long as the CPA or firm seeking to perform the review has received an unqualified peer review report from the AICPA approved by the Board within three years of the date of completion of the peer review for which the temporary permit is being sought and provides evidence thereof to the Board. Associations of certified public accounting firms who wish to be exempted under the provisions of Section 473.302(4), F.S., must submit their plans of administration or evidence of authorization from the AICPA to conduct quality reviews to the Board for approval on an annual basis.

Specific Authority 473.304, 473.305, 473.314 FS. Law Implemented 473.314, 473.315 FS. History—New 12-4-79, Amended 2-3-81, 10-19-83, Formerly 21A-29.02, Amended 5-3-88, 12-3-89, 6-13-90, 3-29-92, 12-2-92, Formerly 21A-29.002, Amended 6-28-94, 1-11-95.

61H1-29.0025 Temporary License - Electronic Practice.

(1) Temporary licenses will be required of out-of-state certified public accountants or firms who wish to practice public accountancy in this state via electronic means (other than for federal tax matters as provided by Section 473.314, F.S.).

(2) Applications for temporary licenses must be filed prior to commencement of the engagement. Applications must be in writing and contain the information as specified in Section 473.314, F.S.

(3) At the time of submission of the application, the out-of-state certified public accountant or firm shall pay to the Department the \$200.00 license fee. The fee will not be refunded in the event the application is withdrawn or denied.

(4) Acceptance of the temporary license constitutes acceptance of the Board's jurisdiction over the work performed by the out-of-state certified public accountant or firm.

(5) The provisions of subsections 61H1-29.002(7) and (8), F.A.C., shall also apply to licenses for electronic practice.

Specific Authority 473.304, 473.314 FS. Law Implemented 473.314 FS. History--New 2-12-98.

61H1-29.003 Experience for Licensure by Endorsement.

(1) Any applicant seeking licensure by endorsement under Section 473.308(3), F.S., shall meet the requirements of that section provided that, while licensed in another state, the applicant has completed whatever continuing education is required by that state to maintain an active license to practice public accounting in that state, so long as such requirements are equivalent to those required to maintain an active license in Florida for the two (2) years immediately preceding the filing of the application.

(2) Experience used to meet the requirements of Section 473.308(4), F.S., must include at least five years experience in the practice of public accounting while licensed as a Certified Public Accountant or Chartered Accountant in the practice of public accounting or as an auditor or accountant in a unit of federal, state, or local government provided that the position held meets the activity and supervision requirements set forth in Section 473.308(4), F.S.

Specific Authority 473.304, 473.308 FS. Law Implemented 473.308 FS. History--New 4-24-88, Amended 6-12-88, Formerly 21A-29.003, Amended 2-12-98, 5-19-03, 1-31-05.

61H1-29.004 Licensure by Endorsement; Domiciled.

For purposes of Sections 473.309(1)(a) and (2)(d), F.S., any partner or shareholder in a Florida licensed certified public accountant firm who would otherwise be considered as domiciled in this state shall not be considered to be in violation of subsection 61H1-36.001(5), F.A.C., so long as the partner or shareholder has applied to the Board for licensure within 30 days of the date the partner or shareholder would otherwise be first domiciled in this state and has obtained a license as a Certified Public Accountant in this state within six months from the date of application. Failure to strictly comply with the provisions of this section shall be considered a violation of subsection 61H1-36.001(5), F.A.C.

Specific Authority 473.304, 473.3101, 473.323(2) FS. Law Implemented 473.309, 473.3101 FS. History--New 4-24-88, Formerly 21A-29.004.

61H1-29.005 CPA Education/CPE Credit.

The CPE reestablishment period for new licensees begins on the date of certification, which is printed on the license. Only courses completed after that date may be used for CPE credit. Accordingly, no courses which count as education for obtaining the CPA license may be used for CPE credit.

Specific Authority 473.304, 473.3101, 473.323(2) FS. Law Implemented 473.311, 473.312 FS. History--New 11-2-95.

CHAPTER 61H1-31 FEES

61H1-31.001 Fees.

61H1-31.001 Fees.

(1) Applicants to sit for the Uniform CPA Examination, as a first time candidate or for candidates transferring partial credits from another state, a fifty dollar (\$50.00) application fee will be owed prior to processing the application. Once the applicant has been approved to sit for the exam as a Florida candidate, the following initial examination fee will be charged to take each section of the exam: Auditing \$159.25, Accounting \$148.00, Regulation \$125.50, and Business E & C \$114.25.

(2) In addition to the examination fee charged to take each section of the exam set forth in subsection (1), re-examination candidates will be charged a re-examination administration fee covering the costs of administration of the re-examination, which will vary depending on the number of examination sections the candidate applies to take per application:

- (a) Four sections of the examination – \$105.00,
- (b) Three sections of the examination – \$90.00,
- (c) Two sections of the examination – \$75.00, or
- (d) One section of the examination – \$60.00.

(3) For individual active and inactive status licenses, biennial renewal fee provided in Section 473.305, F.S., ninety-five dollars (\$95.00).

(4) For change of status other than during the renewal period, fifty dollars (\$50.00); for reactivation of an inactive status license to active status, fifty dollars (\$50.00); for reactivation of a delinquent status license to active or changing a delinquent status license to inactive status fifty dollars (\$50.00). In all cases completion of the requirements of Rule 61H1-33.006, F.A.C., and passage of the examination on Chapters 455 and 473, F.S., and related rules shall be required for reactivation.

(5) The biennial renewal fee provided in Section 473.305, F.S., for partnerships, corporations, and limited liability companies licensed in Section 473.3101, F.S., one hundred fifty dollars (\$150.00). The biennial renewal fee provided in Section 473.305, F.S., for sole proprietor firms and other legal entities owned by a sole proprietor licensed in Section 473.3101, F.S., twenty-five (\$25.00).

(6) Persons, partnerships and corporations licensed in the first year of the biennial period, as established by the Department, shall pay the fees established above. Those persons, partnerships and corporations licensed in the second year of the biennial period, as established by the Department, shall pay one half of the fees established above.

(7) For application for license by endorsement provided in Section 473.308, F.S., one hundred fifty dollars (\$150.00) per person. If such application is withdrawn or denied, no portion of the fee will be refunded by the Department.

(8) For fees relating to the Foreign Language Examination refer to Section 455.11, F.S.

(9) The scan sheet for the Laws and Rules Examination must be postmarked or completed on-line by or on December 31. No Laws and Rules Examination scan sheet will be accepted if it is postmarked or completed on-line after December 31.

(10) The CPE reporting form must be postmarked by or on July 15. If it is postmarked or completed on-line after July 15 but by or on December 31, a \$50.00 delinquency fee will be imposed by the Board. No CPE reporting form will be accepted if it is postmarked or completed on-line after December 31.

(11) Duplicate licensee fee – If a licensee requests a duplicate license, the Board will issue the duplicate if the request is made in writing and is accompanied by a payment of \$25.00.

Specific Authority 455.213(2), 455.219(4), 455.271, 473.305, 473.312 FS. Law Implemented 119.07, 455.219(4), 455.271, 473.305, 473.312, 473.313 FS. History—New 12-4-79, Amended 2-3-81, 3-4-82, 11-6-83, 3-29-84, Formerly 21A-31.01, Amended 6-4-86, 9-16-87, 2-1-88, 8-30-88, 2-6-89, 12-18-89, 12-28-89, 8-16-90, 4-8-92, 12-2-92, Formerly 21A-31.001, Amended 11-4-93, 2-14-95, 11-3-97, 6-22-98, 10-28-98, 7-15-99, 4-3-02, 1-27-04, 1-31-05, 7-14-05, 4-9-06.

CHAPTER 61H1-32 PROBABLE CAUSE PANEL

61H1-32.001 Probable Cause Panel Hearing Guidelines to Consider Investigating Officer's Reports.
(Repealed)

61H1-32.002 Procedures Following Finding of Probable Cause.

61H1-32.002 Procedures Following Finding of Probable Cause.

(1) Upon a finding that probable cause exists, a formal written complaint may be filed against the licensee by the Department. The Department may prosecute the complaint.

(2) Upon the receipt of the written complaint, the licensee may exercise any one, or a combination of the following two (2) courses of action:

(a) Request a formal hearing pursuant to Section 120.57(1), F.S. Such hearing will be held before and independent hearing officer assigned from the Department of Administration, Division of Administrative Hearings. The hearing officer will make a recommended order to the Board which shall issue the final order. Such order shall constitute final agency action.

(b) Request an informal hearing pursuant to Section 120.57(2), F.S. Upon written agreement of all parties, including the Department, such hearing will be heard before the Board with those members of the probable cause panel, if any, being excused, which, as a body, will make the final decision on the matter. The informal hearing will be held only when there is no dispute as to any material issue of fact. If, during an informal hearing, a disputed fact is raised, the informal hearing will be terminated and a formal hearing will be held.

(3) Notwithstanding subsection (2) above, informal disposition may be made of any proceeding by stipulation, agreed settlement or consent order at any time after the finding of probable cause. If the licensee wishes to dispose of the matter in such a way, he may make an offer of settlement to either the probable cause panel, the Department or the Board, at any time, for consideration and acceptance or rejection. Acceptance of an offer of settlement shall require the approval of the Board and the Department. If the offer of settlement is rejected, the licensee will not have jeopardized his rights under (2)(a) and (b) above. If the offer is accepted by the Board and the Department, the matter will be concluded as soon as possible with the signing of necessary documents.

(4) The Department shall have standing to seek judicial review of any final order issued by the Board.

Specific Authority 120.53, 455.013, 473.304 FS. Law Implemented 120.57, 120.60, 455.013 FS. History—New 12-4-79, Formerly 21A-32.02, 21A-32.002.

CHAPTER 61H1-33 REESTABLISHMENT OF PROFESSIONAL KNOWLEDGE AND COMPETENCY

- 61H1-33.001 Certified Public Accountants Required to Comply with this Chapter.
- 61H1-33.002 Organization and Administration.
- 61H1-33.003 Continuing Professional Education.
- 61H1-33.0031 Continuing Professional Education/Ethics.
- 61H1-33.0032 Board Approval of CPA Ethics Continuing Education by Providers.
- 61H1-33.0033 Obligations of CPA Ethics Course Continuing Education Providers.
- 61H1-33.0034 Evaluation of CPA Ethics Course Providers.
- 61H1-33.00341 Duration of CPA Ethics Course Provider Status.
- 61H1-33.00342 CPA Ethics Courses - Standards for Approval of Courses.
- 61H1-33.0035 Continuing Professional Education/Governmental Auditing.
- 61H1-33.006 Inactive Florida Certified Public Accountants Who Desire to Become Active Licensees.
- 61H1-33.0065 Exemption from Renewal Requirements for Spouses of Members of the Armed Forces of the United States.
- 61H1-33.007 Reactivation of Inactive Licenses. (Repealed)
- 61H1-33.008 Permanent Retirement Defined. (Repealed)
- 61H1-33.009 Relicensure of Expired Licenses. (Repealed)

61H1-33.001 Certified Public Accountants Required to Comply with this Chapter.

(1) Each certified public accountant who is licensed to practice public accounting in Florida shall be required to reestablish his professional knowledge and competency in conformity with this rule by the completion of continuing professional education programs and passing the examination on Chapters 455, 473, F.S., and related administrative rules approved by the Board. A grade of at least 80 is a passing grade. Each certified public accountant shall, on or before July 15th prior to biennial license renewal, mail his completed answers to the examination on Chapters 455, 473, F.S., and related administrative rules to the Department of Business and Professional Regulation.

(2) Each Florida certified public accountant who received an original Florida certification after December 31, 1978, shall commence his reestablishment period on the date indicated on his Florida certificate. The initial designated reestablishment period for such licensee shall end on the third June 30th following the date indicated on his Florida certificate. Each succeeding reestablishment period shall begin on July 1, and end on June 30, two years thereafter.

(3) See Rule 61H1-37.001, F.A.C., for reinstatement of suspended certified public accountants and Rule 61H1-33.006, F.A.C., for inactive licensees who desire to become active licensees, which rules relate to continuing professional education requirements.

Specific Authority 473.304, 473.312, 473.313 FS. Law Implemented 473.311, 473.312, 473.313 FS. History—New 12-4-79, Amended 2-3-81, 12-19-82, Formerly 21A-33.01, Amended 4-8-86, Formerly 21A-33.001.

61H1-33.002 Organization and Administration.

There is created the Committee on Continuing Professional Education. Subject to the approval of the Board, said Committee shall:

- (1) Evaluate and determine, either prospectively or retrospectively, whether specific courses, programs, education and training qualify as formal programs of learning which contribute directly to professional competency of an individual following licensure to practice public accounting, and the credit to be granted therefore;
 - (2) Determine in individual cases whether professional knowledge and competency have been reestablished by virtue of the completion of such programs; and
 - (3) Audit the continuing professional education records of licensees on a sample basis from time to time.
- Specific Authority 473.304, 473.312 FS. Law Implemented 473.312 FS. History--New 12-4-79, Amended 2-3-81, 7-2-85, Formerly 21A-33.02, 21A-33.002.*

61H1-33.003 Continuing Professional Education.

(1)(a) In any given reestablishment period, each certified public accountant must have completed at any time or times during the two-year period, at least 80 hours of educational instruction or training in public accounting subjects or courses of study, as defined hereinafter, of which at least 20 hours must have been in accounting-related and/or auditing-related subjects and of which no more than 20 hours may be in behavioral subjects and at least four hours shall be in ethics beginning with the reestablishment period ending June 30, 2006.

(b) Licensees who do not meet the requirements by June 30th will be granted an automatic extension until September 15th provided the licensee submits an additional 8 hours in Accounting and Auditing subjects. An automatic extension will be granted until December 31st provided the licensee submits an additional 16 hours in Accounting and Auditing subjects. Licensees utilizing the automatic extension must submit the required information postmarked or recorded on-line by September 15th or December 31st.

(2) Educational instruction or training in public accounting subjects or courses of study is hereby defined as formal programs of learning, as defined below, which contribute directly to professional competency following licensure to practice public accountancy. Unless otherwise approved by the Board pursuant to Section 120.542, F.S., subjects or courses of study qualifying an individual for the purpose of this rule shall be limited to:

(a) Accounting and auditing subjects to consist of:

1. Accounting-related subjects or courses, including, but not limited to, financial accounting (including current authoritative literature in generally accepted accounting principles in the United States and the Pronouncements of the Accounting Principles Board and the Financial Accounting Standards Board), and accounting for specialized industries.
2. Auditing-related subjects or courses, including, but not limited to, general auditing theory and practice (including current authoritative literature in generally accepted auditing standards in the United States and the Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants), auditing for specialized industries (including governmental auditing requirements) and audit applications to computers and information systems; and other category courses to consist of:

(b) Technical business subjects to consist of:

1. Taxation.
2. Management services and management advisory services.
3. General business including, but not limited to, economics, business law, production or operational systems, marketing, finance, quantitative applications in business and business policy, and computers and information systems without audit applications; and

(c) Behavioral subjects to consist of:

1. Oral and written communications.
2. The social environment of business.
3. Administration of a public accounting practice including, but not limited to, behavioral sciences, managerial effectiveness and management by objectives.

(3) Effective July 1, 1999, educational instruction or training in public accounting subjects or courses of study is hereby defined as formal programs of learning as defined below, which contribute directly to professional competency following licensure to practice public accountancy. Subjects or courses of study qualifying an individual for the purposes of this shall be limited to:

(a) Accounting and auditing subjects to consist of: Accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative accounting principles issued by the standard-setting bodies, and any other related subject generally classified within the accounting discipline. Subjects include auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and the reporting on the results of audit findings, compilation and review. It also includes assurance services that relate to Standards for Attest Engagements.

(b) Technical business subjects to consist of:

1. Taxation including tax compliance and tax planning.
2. Consulting services including management advisory services; personal financial planning services; planning and control systems dealing with planning, organizing and controlling any phase of individual financial activity or business activity; designing, implementing, and evaluating operating systems as well as business advisory services and personal financial planning.
3. Management including practice management for the public practitioner; financial management of an organization including information systems, budgeting and asset management, planning, buying and selling businesses, contracting for goods and services and foreign operation; budgeting; cost analysis; human resource management; and financial management.
4. Specialized knowledge and applications including subjects related to specialized industries such as not for profit organizations, health care, oil and gas.

(c) The ethics courses shall consist of:

1. A review of Chapters 455 and 473, F.S., and the related administrative rules.
2. The ethics course may include other subjects including but not limited to: ethical conduct, core values and competencies, professional responsibility, responsibility to clients and the public, case studies that require the application of ethics principles, national professional standards and interpretations, and appropriate national issues related to the practice of accounting;

(d) Behavioral subjects including oral and written communications and the social environment of business. All courses not covered above are considered behavior except for business meetings, social functions, committee service and courses in elementary accounting or basic mathematics which do not qualify for credit.

(4) Credit may be prorated by the sponsor for courses that cover more than one area of study by (1) prorating the amount of time spent in each area or (2) awarding credit based on the lowest topic covered with accounting and auditing being the highest and behavioral the lowest. Therefore an eight-(8-) hour course that was 75% accounting and auditing and 25% management would receive six (6) hours of accounting and auditing credit and two (2) hours of technical business or eight (8) hours of all technical business. Hours cannot be prorated in less than one hour increments.

(5) In order for a licensee to receive credit for programs of learning, as defined above, the following formalities and further requirements must be met:

(a) Courses taken at institutions of higher education:

1. Higher education credit courses taken from an accredited institution as defined in subsection 61H1-27.001(1), F.A.C., shall be credited for continuing professional education purposes at the rate of 15 hours for each semester hour of higher education credit and 10 hours for each quarter hour of higher education credit, provided the number of contact hours (hours in the classroom) totals at least 90% of the continuing professional education credit so determined. Otherwise, continuing professional education credit shall be limited to the actual number of contact hours.
2. Higher education non-credit courses shall be credited for continuing professional education purposes equivalent to the actual number of contact hours.
3. Continuing professional education credit for instructing a higher education course shall be twice the credit which would have been granted participants for the first presentation of a specific course of program, the same as the credit granted a participant for the second presentation and none thereafter, except as permitted by subparagraph 61H1-33.003(4)(b)4., F.A.C.
4. No continuing professional education credit shall be permitted for attending or instructing accounting courses considered to be elementary.

(b) Other professional education or training:

1. Professional development courses shall be credited for continuing professional education purposes in full hours only, equivalent to the actual number of contact hours (hours in the classroom which must include at least fifty minutes of continuous participation) provided an outline (defined as a schedule of activity listing

major topics of discussion) is prepared in advance and retained; a course is at least one contact hour in length; the course conducted by a qualified instructor, lecturer or discussion leader; and a record of registration and attendance is maintained. For this purpose, a one-day program will be granted eight hours credit if the total lapsed time is at least eight hours and the contact time is approximately 400 minutes. An instructor, lecturer or discussion leader will be considered qualified if, through formal training or experience, he has obtained sufficient knowledge of the subject matter to competently instruct the course. A course participant will be granted credit for only that portion of a course actually attended. If a record of registration and attendance is not maintained by the sponsoring organization, the course participant must be able to prove registration and attendance.

2. Formal organization in-firm educational programs shall be credited for continuing professional education purposes to the same extent and by the same requirements as other professional development courses.

3. Instructors, lecturers, panelists and discussion leaders for professional development courses and formal organized in-firm educational programs shall be credited for continuing professional education purposes at twice the credit granted participants for the first presentation of a specific course or program, the same as the credit granted a participant for the second presentation and none thereafter, except as permitted in subparagraph 61H1-33.003(4)(b)4., F.A.C. Co-panelists and co-discussion leaders shall be credited for the portion of specific course or program they must prepare to discuss and lead as a co-panelist or co-discussion leader.

4. To the extent course content has been substantially revised, the revised portion shall be considered a first presentation for the purposes of subparagraph 61H1-33.003(4)(b)3., F.A.C.

5. Formal correspondence or other individual study programs must require registration and provide evidence of satisfactory completion and shall be credited for continuing professional education purposes as approved in an amount equal to one-half of the average completion time established by the course sponsor. Formal correspondence or other individual study programs must be pre-approved by the Committee on Continuing Professional Education. In order to receive approval of courses and/or providers, evidence of the following must be submitted by the provider:

a. That there is a registration requirement,

b. That the course is developed and intended primarily as an educational activity,

c. That the course has been pre-tested to determine the average completion time,

(I) Non-interactive programs shall be credited in an amount equal to one-half of the average completion time, and

(II) Interactive programs shall be credited for actual completion time,

d. Evidence of satisfactory completion,

e. An evaluation (test) to determine whether learning objectives where met has been conducted.

(6) Each certified public accountant shall, on or before July 15 prior to his biennial license renewal, report on forms prescribed by the Board, programs of continuing professional education completed during the applicable reestablishment period. Each certified public accountant's documentation supporting such programs shall be retained through the two years following a two-year reestablishment period.

Documentation is to be retained to support evidence of completion of the required hours to enable a random audit by the Department of Business and Professional Regulation to determine compliance with the requirements. If staff review or review by the Committee on Continuing Professional Education determines that courses are either improperly classified or do not otherwise meet the requirements of the chapter, then the licensee will be given 60 days from the date of notification, but no later than December 1, to comply with the continuing professional education requirements. Licensees who complete the continuing professional education requirements timely but who are found to be deficient after December 1 of their renewal year must correct the error and pay a \$50 fine within 60 days.

(7) Effective July 1, 1999, sponsors of formal correspondence or other individual study technical business and accounting and auditing programs must be approved by the National Association of State Board of Accountancy Quality Assurance Service. Credit for courses taken from National Association of State Board of Accountancy Quality Assurance Service sponsors will be awarded in an amount equal to the average completion time. Credit from non-approved sponsors is not acceptable for accounting and auditing and technical business courses.

Specific Authority 120.55(1)(a)4., 455.213(6), 455.2177, 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 473.312(1)(a), (c) FS. History--New 12-4-79, Amended 2-3-81, 4-5-83, 10-19-83, 8-20-85, Formerly 21A-33.03, Amended 9-18-88, 7-7-92, 12-2-92, Formerly 21A-33.003, Amended 12-14-93, 1-26-98, 12-17-00, 8-21-01, 3-21-05, 5-18-05, 7-10-05.

61H1-33.0031 Continuing Professional Education/Ethics.

Effective with the CPE reporting period ending June 30, 2006:

- (1) A licensee must complete no less than four of the total hours required for any reestablishment period.
- (2) Licensees shall attain a certificate of course completion prior to completing the exam requirements in Rule 61H1-28.007, F.A.C.
- (3) In the event the course is taken in two modules, licensees must complete the four-hour requirement with the same provider.

Specific Authority 120.55(1)(a)4., 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 5-18-05.

61H1-33.0032 Board Approval of CPA Ethics Continuing Education by Providers.

- (1) Applicants for continuing education provider status to offer courses which satisfy the four (4) hour certified public accountant continuing education ethics requirement in Section 473.312(1)(c), F.S., must meet the requirements of subsections (2) and (3) of this rule.
- (2) To demonstrate the education and/or the experience necessary to offer courses which satisfy the CPA continuing education ethics requirement, an applicant for continuing education provider status must be a regionally accredited educational institution, a commercial educator, a governmental agency, a state or national certified public accounting professional association whose purpose includes fostering ethical conduct and promoting standards of independence, integrity, and objectivity in the certified public accounting profession, a certified public accountant who has not been disciplined by the Board, or a certified public accounting firm.
- (3) To allow the Board to evaluate an application for continuing education provider status, the applicant must submit the following:
 - (a) The name, address and telephone number of the prospective provider;
 - (b) A description of the ethics course the provider expects to conduct for credit to include a review of Chapters 455 and 473, F.S., the related administrative rules, and topics including but not limited to: ethical conduct, core values and competencies, professional responsibility, responsibility to clients and the public, case studies that require the application of ethics principles, national professional standards and interpretations, and appropriate national issues related to the practice of accounting;
 - (c) A description of the staffing capability of the applicant;
 - (d) A sample of intended course materials;
 - (e) A list of anticipated locations to conduct the courses;
 - (f) A complete course curriculum;
 - (g) A description of the means the applicant will use to update the course in response to rule or law changes;
 - (h) Documentation that the ethics course instructor will notify the ethics course provider of any disciplinary action taken against the instructor by the Board; and
 - (i) A fee in the amount of \$250.00 to reimburse the Board and Department for the review of each course for compliance with these rules and Section 473.312(1)(c), F.S.
- (4) Should the Board determine that the provider has failed to provide appropriate continuing education services, it shall request that the Department issue an order requiring the provider to cease and desist from offering certified public accountant ethics continuing education courses and shall request that the Department revoke any approval of the certified public accountant ethics course provider granted by the Board.
- (5) No provider may allow any certified public accountant to conduct any certified public accountant ethics course or seminar offered by the provider if that certified public accountant has been disciplined. Upon receipt of notice from an instructor that the instructor has been disciplined, the provider shall, within fourteen (14) days, write to the Board office and confirm that the instructor is no longer conducting certified public accountant ethics courses or seminars offered by the provider. For the purpose of this subsection, a letter of guidance shall not constitute “discipline.”
- (6) The Board retains the right and authority to audit and/or monitor programs and review records and course materials given by any provider approved pursuant to this rule. The Board shall revoke the approved status of the ethics course provider or reject individual ethics courses given by an ethics course provider if the provider disseminated any false or misleading information in connection with the continuing education programs, or if the provider fails to conform to and abide by the rules of the Board.

Specific Authority 120.55(1)(a)4., 455.213(6), 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 6-30-05.

61H1-33.0033 Obligations of CPA Ethics Course Continuing Education Providers.

To maintain an approved status as an ethics course continuing education provider, the provider must:

- (1) Retain documentation that the course instructor is a certified public accountant licensed by a state or territory of the United States who has practiced in a public accounting firm for five of the last ten years, whose background, training, education or experience makes it appropriate for the person to teach the course.
- (2) Require each licensee to complete the entire four-hour certified public accountant ethics course requirement in order to receive a certificate of attendance. Offer the four-hour certified public accountant ethics course in one module of four credit hours or two modules of two credit hours.
- (3) Furnish each participant with an individual certificate of attendance in a format to include course date, location, attendee name and certified public accountant ethics course provider number. An attendance record shall be maintained by the provider for four years and shall be available for inspection by the Board. Providers shall maintain security of attendance records and attendance records.
- (4) Ensure that all promotional material for courses or seminars offered to licensees for credit contain the certified public accountant ethics course provider number and course title.
- (5) Allow only one hour credit for each hour of classroom, audio or video instruction, an “hour of classroom, audio or video instruction” being a minimum of 50 minutes instruction or presentation.
- (6) Allow only one hour of credit for each “hour of correspondence study.” The “hour of correspondence study” must be based on the average completion time of each course as established by the provider.
- (7) Provide a written examination to each participating licensee in correspondence study courses. In order to complete the course, the licensee must sign and date the examination and receive a minimum grade of eighty percent (80%). If a licensee fails the examination, the licensee will be permitted to take the examination again in order to achieve a passing grade.
- (8) Ensure that all correspondence or other individual study courses are approved by the National Association of State Boards of Accountancy Quality Assurance Service.
- (9) Notify the Board within thirty (30) days of any change in the address or telephone number of the provider.
- (10) Allow the Board to have access to information concerning courses or seminars conducted by the provider for continuing education credit.

Specific Authority 120.55(1)(a)4., 455.213(6), 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 5-18-05.

61H1-33.0034 Evaluation of CPA Ethics Course Providers.

The Board or its designee reserves the right to evaluate continuing education ethics courses or seminars offered to certified public accountants for credit by the following methods:

- (1) Observing such ethics courses or seminars; and
- (2) Reviewing the files of the provider to gain information about any course or seminar offered to certified public accountants for ethics course credit.

Specific Authority 120.55(1)(a)4., 455.213(6), 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 5-18-05.

61H1-33.00341 Duration of CPA Ethics Course Provider Status.

- (1) Continuing education providers are approved only for the biennium during which their application was received and approved. Providers must reapply for approved provider status at the beginning of each biennium. The biennium for continuing education providers ends on June 30th of each odd-numbered year.
- (2) The Board shall notify certified public accountant ethics course providers at least ninety (90) days prior to the date of expiration of the provider status.
- (3) A provider must reapply for approval at least sixty (60) days prior to the date of expiration of provider status in order to prevent a lapse in provider status.

Specific Authority 120.55(1)(a)4., 455.213(6), 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.213(6), 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 5-18-05.

61H1-33.00342 CPA Ethics Courses – Standards for Approval of Courses.

(1) In order to meet the requirements of paragraph 61H1-33.0032(3)(b), F.A.C., each approved CPA Ethics Course Provider shall submit a syllabus of each ethics course for which it seeks Board approval. The syllabus shall include a description of the manner by which the course (including its various components) meets the requirements of this rule.

(2) The syllabus of the course shall include the following:

(a) A description of each subject to be covered during the presentation of the course with the estimated time to be spent addressing each subject, the individual(s) who will be responsible for presenting each subject, a listing of the sources (through a bibliography or notes) from which the course material addressing each subject is drawn, and any tests, quizzes or exercises provided during the offering of the course;

(b) The manner in which the course complies with the requirements of Section 473.312(1)(c), F.S. In order to meet this requirement the course shall be limited to addressing the ethical and professional responsibilities of CPAs with emphasis on ethical conduct, core values and competencies, professional responsibility, responsibility to clients and the public, case studies that require the application of ethics principles, national professional standard and interpretations, and appropriate national issues related to the practice of accounting. Practice-oriented programs are preferred insofar as such programs involve the CPA in the process of the practice of public accountancy. Courses should be structured to confront the question, “How will you handle this situation when it occurs in your practice?”

(c) The course shall include a review of Chapters 455 and 473, F.S., and the related administrative rules.

(3) A provider may meet the requirements set forth herein through various generally accepted methodologies. Thus, lectures, case studies, discussion groups, interactive studies and other recognized methods may be utilized. Additionally, providers may target specific areas of CPA practice in each course submitted for approval. A provider may offer a course module which, for example, addresses CPA ethics and professionalism in Tax Practice or Managerial Accounting as well as other areas of practice.

(4) Upon receipt of the syllabus required in subsection 61H1-33.0342(2), F.A.C., the Board will review the course to determine whether it complies with this rule, the provisions of Section 473.312(1), F.S., and the CPA Ethics Provider Rules set forth in Chapter 61H1-33, F.A.C. If the Board rejects a course in whole or in part, a provider will be offered the option of modifying the course or withdrawing the course and resubmitting the course for approval. However, all courses submitted for approval must be submitted at least sixty (60) days prior to either the ending of the provider’s approval as a CPA Ethics Course Provider as set forth in Rule 61H1-33.00341, F.A.C., or sixty (60) days prior to the initial date the course will be taught—whichever occurs earlier.

Specific Authority 120.55(1)(a)4., 455.2177, 455.2178, 455.2179, 473.304, 473.312 FS. Law Implemented 455.2177, 455.2178, 455.2179, 473.312(1)(a), (c) FS. History—New 7-10-05.

61H1-33.0035 Continuing Professional Education/Governmental Auditing.

(1) Effective with the CPE reporting period ending June 30, 1996:

(a) Any licensee who is involved in governmental audits shall be required to comply with the CPE requirements imposed by Government Auditing Standards 1994 commonly referred to as the “Yellow Book,” which is hereby incorporated by reference, if during the engagement:

1. The licensee is the in charge person, or
2. The licensee reviews the working papers or report or both, or
3. The licensee supervises others, or
4. The licensee is the only licensee performing the work.

(b) Licensees conducting audits controlled by either subparagraph 1. or 2. below, shall be required to take 24 hours of governmental CPE and shall be required to comply with the CPE requirements imposed by Government Auditing Standards.

1. Government Auditing Standards, 1994 Revision, issued by the Comptroller General of the United States, or

2. The Rules of the Auditor General, Chapter 10.550.

(2) The required 24 hours of governmental CPE may be used to meet the courses required in paragraph 61H1-33.003(1)(a), F.A.C., provided they meet the requirements of subsection 61H1-33.003(2), F.A.C.

Specific Authority 473.312(3) FS. Law Implemented 473.312(3) FS. History—New 8-22-90, Amended 7-7-92, Formerly 21A-33.0035, Amended 5-26-96.

61H1-33.006 Inactive Florida Certified Public Accountants Who Desire to Become Active Licensees.

(1) Each certified public accountant who has requested or reverted to inactive status as distinguished from a certified public accountant whose certificate or license has been suspended who desires to become an active licensee, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation on forms prescribed by the Board and submitted to the Department.

(2) Each such application shall demonstrate successful completion of the required number of continuing professional education hours. Inactive licensees must satisfy the requirements of their last reestablishment period, plus successful completion of at least 32 hours total, of which at least 8 hours must be in accounting and auditing subjects for each year or portion thereof the license was inactive prior to July 1, 1989 and 40 hours total, of which at least 10 hours must be in accounting and auditing subjects for each year or portion thereof license was inactive after June 30, 1989. No more than 25% of the total required hours may be in behavioral subjects, as defined in paragraph 61H1-33.003(3)(c), F.A.C., if taken subsequent to July 1, 1985. The necessary hours must have been completed in the twenty-four months immediately preceding the date of application for reactivation. This twenty-four month requirement will be waived where the licensee can document completion of the CPE requirements in all biennia in the same manner as if the licensee had remained active.

(3) The first establishment period after reactivation shall commence on the following July 1st and the initial designated reestablishment date shall be the third June 30th following reactivation.

(4) Each such applicant must pass the examination on Chapters 455 and 473, F.S., and related administrative rules approved by the Board. A grade of at least 80 is a passing grade.

Specific Authority 473.304, 473.311, 473.312, 473.313 FS. Law Implemented 473.311, 473.312, 473.313, 473.323(1)(h) FS. History—New 12-4-79, Amended 2-3-81, 11-6-83, 3-29-84, 8-20-85, Formerly 21A-33.06, Amended 4-8-86, 12-28-89, 10-16-90, Formerly 21A-33.006, Amended 12-14-93, 5-26-96.

61H1-33.0065 Exemption from Renewal Requirements for Spouses of Members of the Armed Forces of the United States.

A licensee who is the spouse of a member of the Armed Forces of the United States and was caused to be absent from the State of Florida because of the spouse's duties with the armed forces shall be exempt from all licensure renewal provisions under these rules during such absence. The licensee must show proof to the Board of the absence and the spouse's military status.

Specific Authority 455.02(2) FS. Law Implemented 455.02(2) FS. History—New 7-13-04.

CHAPTER 61H1-34 PERSONS OTHER THAN CERTIFIED PUBLIC ACCOUNTANTS

61H1-34.001 Preparation of Financial Statements by Persons Other than Certified Public Accountants or Inactive Certified Public Accountants.

61H1-34.002 Notice to Public by Non-Licensed Persons.

61H1-34.001 Preparation of Financial Statements by Persons Other than Certified Public Accountants or Inactive Certified Public Accountants.

(1) As provided in Section 473.322, F.S., persons other than certified public accountants or certified public accountants on inactive status may prepare financial statements and submit them to others provided that:

(a) Such financial statements are issued without attestation as an expert in accountancy as to the reliability or fairness of the presentations shown therein or expression of opinion as defined in Rule 61H1-20.005.

(b) Such financial statements, or reports, transmittal letters or other written communication issued or associated with financial statements, shall not in any manner whatsoever state, show, claim or imply that the financial statements resulted from an audit examination or review.

(c) Any report, transmittal letter or other written communication issued with such financial statements, in addition to setting forth an address, salutation and reference to the completion and submission of a tax return, may identify and list the financial statements submitted, state that the financial statements are unaudited or prepared without audit from the records or books of account, and state that such financial statements are in agreement or have been reconciled with the tax return.

(d) Any such report, transmittal letter or other written communication issued with the financial statements as provided in subparagraph (c) above may also contain a listing of procedures (as distinguished from auditing procedures or standards and accounting principles or standards) used in preparing the financial statements, provided:

1. the procedures listed are not so extensive, or the listing worded in such manner, as to claim or imply that the financial statements are the result of an audit or examination performed in accordance with generally accepted auditing standards or a review as contemplated by standards for accounting and review services; and
 2. the description of the procedures does not use words or terminology which connote or relate to an audit or examination in accordance with generally accepted auditing standards or the presentation of financial statements in conformity with generally accepted accounting principles (e.g., words or terminology such as audit, examination, opinion, certificate, certify, fairly present, auditing procedure, auditing standard, audit test, test of accounting records, accounting principle or standard, generally accepted auditing standard, generally accepted accounting principle or standard).
 3. the listing of such procedures is followed by the statement, "these procedures do not constitute an audit or examination of these financial statements in accordance with generally accepted auditing standards, nor do they imply either an expression of opinion, or disclaimer of opinion, as to the fairness of the presentation of the financial statements or their conformity with generally accepted accounting principles" or a statement or words to that effect.
- (2) The preparation of tax returns by persons other than certified public accountants, which is permitted by Section 473.322, F.S., may not include the preparation of financial statements and submission to others except in accordance with the guidelines contained in paragraph (1) above.

Specific Authority 473.304, 473.323 FS. Law Implemented 473.302(7)(b), 473.322 FS. History—New 12-4-79, Formerly 21A-34.01, 21A-34.001 Amended 2-3-94, 1-11-95, 10-28-98.

61H1-34.002 Notice to Public by Non-Licensed Persons.

A person or firm that is not a licensee shall not hold itself out as engaged in or as qualified to engage in the practice of public accounting; and shall not assume or use the titles or designations "Certified Public Accountant" or "Public Accountant" or, a "CPA" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate licensure to practice public accounting. Any such person or firm that is a member of, or is associated with any association, society or other group of accountants or public accountants, shall when indicating such membership association include the words "Not registered with the Board of Accountancy," "Not licensed by the Department of Business and Professional Regulation," or similar words in letters of equal size and prominence to those indicating association, society or other group membership or affiliation.

Specific Authority 473.304, 473.323 FS. Law Implemented 473.322, 473.323 FS. History—New 12-4-79, Formerly 21A-34.02, 21A-34.002.

CHAPTER 61H1-35 FOREIGN LICENSURE EXAMINATION

61H1-35.001 Application for Foreign Licensure Examination.

61H1-35.002 Examination to Foreign Speaking Florida Residents.

61H1-35.001 Application for Foreign Licensure Examination.

The Department or the Board, if delegated by the Department, shall accept application pursuant to Section 455.11, F.S., from an individual who provides proper documentation that he has successfully completed, or is currently enrolled in, an approved course of study created pursuant to Section 455.11(2), F.S. Such original or re-application shall be delivered to the Department or the Board no later than July 1 for the November examination and January 1 for the May examination. If mailed, postmark will constitute date of delivery.

Specific Authority 455.11, 473.304 FS. Law Implemented 455.11 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-35.01, 21A-35.001

61H1-35.002 Examination to Foreign Speaking Florida Residents.

(1) Any person who has filed valid application pursuant to Rule 61H1-35.001, shall be deemed qualified for examination and reexaminations which shall be administered in the English language unless 15 or more such applicants request that said examination be administered in their native tongue. In the event that such examination is administered in a foreign language, said examination shall be substantially equivalent to the Uniform CPA Examination.

(2) The requirements of Rules 61H1-28.001 through 61H1-28.006, shall be applicable to both examinations administered pursuant to subsection (1) above.

Specific Authority 455.11, 473.304, 473.306 FS. Law Implemented 455.11, 473.306 FS. History–New 12-4-79, Amended 2-3-81, Formerly 21A-35.02, 21A-35.002.

CHAPTER 61H1-36 DISCIPLINE

- 61H1-36.001 Discipline. (Repealed)
- 61H1-36.002 Return of Certificates or Licenses.
- 61H1-36.003 Time for Payment of Civil Penalties.
- 61H1-36.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.
- 61H1-36.005 Citations.
- 61H1-36.0055 Minor Violation, Notice of Non-Compliance.
- 61H1-36.006 Mediation.

61H1-36.002 Return of Certificates or Licenses.

Any certificate or license issued by the Department and subsequently suspended or revoked, other than for failure to pay biennial registration fee as required by Section 473.305, F.S., shall be promptly returned to Department's administrative offices.

Specific Authority 473.304, 473.322, 473.323 FS. Law Implemented 473.322, 473.323 FS. History–New 12-4-79, Amended 2-3-81, Formerly 21A-36.02, 21A-36.002.

61H1-36.003 Time for Payment of Civil Penalties.

In cases where the Board of Accountancy imposes a civil penalty for violation of Chapter 455 or 473, F.S., or the rules promulgated pursuant there under, the penalty shall be paid within thirty (30) days of its imposition by Order of the Board. *Specific Authority 455.227(2), 473.304 FS. Law Implemented 455.227(2) FS. History–New 2-3-81, Formerly 21A-36.03, 21A-36.003.*

61H1-36.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1)(a) The board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners guilty of violating Chapter 473, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapter 473, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the board's discretion.

(b) Standard probationary terms will include, as applicable, a review of the licensee's practice, including analysis of selected financial statements (including working papers), restriction of the scope of the licensee's practice and review of internal controls put in place by the licensee in order to eliminate the violation. All of the above will usually include the use of a CPA consultant employed by the Department of Business and Professional Regulation or approved by the Board and will usually require the licensee to assume the cost of the consultant's activities. Additional continuing education may also be required of a licensee where deficiencies in a particular practice area are noted. In all cases of probation or suspension a report showing compliance with the terms of the final order must be received and accepted by the Board prior to the termination of the probation or suspension. Other specific terms of probation or suspension may be imposed, as necessary, by the Board.

(2) The following disciplinary guidelines shall be followed by the board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

<u>VIOLATION</u>	<u>PENALTY RANGE</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
(a) Attempting to procure license by bribery or fraudulent misrepresentation (455.227)(1)(h),	Revocation and \$5,000 fine if licensed (denial of license and refer to State Attorney if not licensed)	
(b) CPA License disciplined by another jurisdiction (455.227)(1)(f), 473.323(1)(c), F.S.)	Same penalty as imposed in other jurisdiction or imposition of same range of penalties as those set forth in those rules for the same type of violation.	
(c) Criminal conviction relating to accountancy	Misdemeanor:	Reprimand \$5000 fine over

473.323(1)(d), F.S.) (455.227(1(c),	Reprimand	(1) year suspension and two (2) year probation
	Felony: One (1)year suspension; two (2) year probation \$5000 fine	Revocation & \$5000 fine
(d) Knowingly making or filing false report (455.227 (1) (g), (1) (I), 473.323(1)(e), F.S.)	Reprimand one (1) year	Revocation \$5000 fine probation
(e) Fraudulent, false, deceptive or misleading advertising (473.323(1)(f), F.S., Rule 61H1-24.001, F.A.C.)	Letter of Guidance	Reprimand, one (1) year probation and \$5000 fine
(f) Incompetence (mental or physical impairment) (473.323(1)(g),F.S.) (Rule 61H1-36.001(3), F.A.C.)	Suspension until ability to practice proved followed by probation	
(g) Fraud deceit or misleading (455.227(1)(a),(m), (473.323(1)(g) (k), F.S.)	Reprimand; one (1) year suspension; two (2) years probation and \$5000 fine	\$5000 fine & revocation
(h) Negligence or misconduct	Letter of Guidance	Reprimand and one (1) year probation (continuing education & review of practice at licensee's expense and limited area of practice)
1. Technical standards and professional competence (455.227 (1) (o), 473.315, F.S.; Rules 61H1-21.006 And 61H1-22, F.A.C.)		
2. Lack of independence (473.315, 473.319, 473.3205, F.S., Rule 61H1-21.001, F.A.C.)	Reprimand, one (1) year probation with review of practice and continuing education	Reprimand, one (1) year suspension, two (2) years probation and review of practice & continuing education
3. Commissions & contingent (Rules 61H1-21.001, 61H1-21.003, 61H1-21.005 F.A.C.)	Reprimand	One (1) year suspension, fees two(2) years probation \$5000 fine
4. Client records disposition 61H1-23.002, F.A.C.)	Letter of Guidance	Suspension until records (Rule are returned
(i) Practicing on suspended or revoked license (473.323(1)(i), F.S.	Revoke if previously suspended; refer to State Attorney if previously revoked	
(j) Practicing on inactive or delinquent license (455.271,473.323(1)(i), F.S.)	Reprimand and fine based on length of time in practice while inactive; \$100/month or \$5,000 maximum (penalty will require licensure or cease practice)	
(k) Licensee practicing in an unlicensed firm (including sole proprietors) or otherwise in violation of 473.309, 473.3101, and 473.323(1)(g), F.S., 61H1-	Reprimand and \$100 per month fine to maximum of \$5,000 and suspension of right to practice until corrected	

26.001, F.A.C.

(l) Suspension of right to practice in front of any state or federal agency (sections 455.227(1)(f), 473.323(1)(j), F.S.)	Same penalty as imposed by agency or imposition of same range of penalties as those set forth in those rules for the same type of violation		
(m) Lack of Good Moral Character (473.323(1)(l), F.S.)	Reprimand; and one year probation	Revocation	
(n) Failure to pay fines or administrative costs imposed by final order or citations set forth in 61H1-36.005, F.A.C.	\$100 per month late fee for every month the licensee is late to a maximum of \$5,000	Revocation	
(o) Violation of CE requirements (473.323(1)(a) & 473.312 or 473.323(1)(h) 455.227(1)(q) F.S. by 61H1-33.003 and/or 61H1-33.0035, F.A.C.)	Reprimand, Probation, make up missed CEs and Penalty CEs	Suspension & \$1000 fine	
(p) Violation of client confidentiality (473.323(1)(a) 455.227(1) (q), F.S. by, 61H1-23.001, F.A.C.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
(q) Misleading or deceptive name (473.323(1)(a) by 473.321, F.S.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
(r) Violation of 473.323(1)(a) by section 473.322, F.S. :			
1. Present license of another as one's own section (473.322(1)(d), F.S.	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
2. Give false or forged evidence to Board or member thereof (section 473.322(1)(e), F.S.	Reprimand, Probation & \$1000 fine	Revocation & \$5000 fine	
3. Use or attempt to use license that has been suspended, revoked, or placed on inactive or delinquent status (section 473.322(1)(f), F.S.)	Reprimand, Probation & \$1000 fine	Revocation & \$5000 fine	
4. Employ unlicensed persons to practice public accounting; aiding or assisting practice public accounting (section 473.322(1)(g), F.S.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
5. Conceal information relative to violations of Chapter 473 (section 473.322(1)(h), F.S.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
(s) Failure to provide legally required written disclosure to client or public (violation of section 473.323(1) (m), F.S.	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
(t) Violation of 473.323(1)(a) by section 455.227(1), F.S.:			
1. Improper influence on client (section 455.227(1)(n), F.S.	Reprimand, Probation & \$1000 fine	Revocation & \$5000 fine	
2. Improper delegation of professional responsibilities (section 455.227(1)(p) F.S.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine	
3. Improper interference with investigation or disciplinary proceeding (section 455.227(1)(r), F.S.	Reprimand, Probation & \$1000 fine	Revocation & \$5000 fine	

4. Failure to perform statutory/legal obligations (section 455.227 (1) (k), F.S.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine
(u) Failure to maintain current address (violation of sections 455.275, 455.227(1)(q), and 473.323 (1)(h), F.S. by violating Rule 61H1-26.005, F.A.C.)	Reprimand & \$500 fine	Suspension & \$1000 fine
(v) Standards for assembly of financial statements (violation of sections 455.227(1)(q) and 473.323 (1)(h), F.S. by Rule 61H1-20.0053, F.A.C.)	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine
(w) Violation of sections 473.323(1)(h) and 455.227(1)(q), F.S., by Rule 61H1-25.001, F.A.C.) Same as (t) (2) supra	Reprimand, Probation & \$1000 fine	Suspension & \$5000 fine
(x) Minimum Capital (Violation of sections 455.227 (1)(q) and 473.323 (1) (h), F.S. by Rule 61H1-26.002, F.A.C.)	Reprimand, Probation & \$1000 fine & Corrective Action. Must document required capital	Suspension & \$5000 fine
(y) Licensure of firm names and changes (violation of sections 455.227 (1)(q) and 473.323 (1) (h), F.S. by Rules 61H1-26.003 and 61H1-26.004, F.A.C.)	Reprimand, Probation & \$100/Month fine & Corrective Action. Must document licensure	Suspension & \$5000 fine
(aa) Failure to report discipline violation (section 455.227(1) (i) F.S.)	Reprimand, Probation, and \$1000 fine	Suspension & \$5000 fine

(3) The Board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the Board prior to the imposition of a final penalty.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the maximum level of discipline in the guidelines shall include but not be limited to the following:

1. History of previous violations of the practice act and the rules promulgated thereto.
2. In the case of negligence; of the magnitude and scope of the engagement and the damage inflicted upon the general public by the licensee's misfeasance.
3. Evidence of violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.
4. Violation of the provision of the practice act wherein a letter of guidance as provided in Section 455.225(3), F.S., has previously been issued to the licensee.
5. Multiple convictions of violations of the same provision of Chapter 473, F.S., or the rules promulgated thereto contained in the same administrative complaint.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. In cases of negligence, the minor nature of the engagement in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.
2. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.
3. Restitution of any damages suffered by the licensee's client.
4. The licensee's professional standing among his peers including continuing education.
5. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.
6. The degree of financial hardship incurred by a licensee as a result of the imposition of fines or the suspension of his practice.
7. Cooperation with the Department of Business and Professional Regulation and the Board including understanding and admission of the violation by the Respondent.

Specific Authority 455.2273 FS. Law Implemented 455.2273, 473.323(1)(m) FS. History—New 1-7-87, Amended 9-16-87, 8-25-88, 6-18-91 12-30-91, Formerly 21A-36.004, Amended 12-7-93, 5-23-94, 8-16-99, 1-31-05.

61H1-36.005 Citations.

- (1) Pursuant to Section 455.224, F.S. (1991), the Board sets forth in subsection (3) of this rule those violations for which there is no substantial threat to the public health, safety and welfare; or, if there is a substantial threat to the public health, safety and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the fine to be imposed.
- (2) Prior to issuance of the citation, the Department must confirm that the violation has been corrected or is in the process of being corrected. If the violation is a substantial threat to the public health, safety and welfare, such potential for harm must be removed prior to issuance of the citation.
- (3) The following violations with accompanying fines may be disposed of by citation:
 - (a) Practicing on inactive license (Section 473.323(1)(i), F.S.) Reprimand and fine based on length of time in practice while inactive; \$100/month or \$5,000 maximum (penalty will require licensure or cease practice).
 - (b) Licensees practicing in an unlicensed firm (including sole proprietors) Reprimand and \$100 per month fine to or otherwise in violation of Sections 473.309, 473.3101, and 473.323(1)(g), F.S. maximum of \$5,000 and suspension of right to practice until corrected.
 - (c) Licensees who complete continuing professional education requirements timely but who are found deficient after December 1st of their renewal year (subsection 61H1-33.003(5), F.A.C.) Submit documentation that deficient hours have been completed and pay \$50 fine within 60 days.
 - (d) Licensees who fail to timely submit complete documentation for a CE audit fined \$100 per month
- (4) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions thereof. The citation and complaint may be considered as aggravating circumstances in future disciplinary actions pursuant to paragraph 61H1-36.004(3)(a), F.A.C.
- (5) The procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 455.225, F.S., to be applied. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 455.225, F.S., shall apply.

Specific Authority 455.224, 455.225, 473.304 FS. Law Implemented 455.224 FS. History—New 12-30-91, Formerly 21A-36.005, Amended 12-7-93, 5-23-94, 8-16-99, 5-11-03.

61H1-36.0055 Minor Violation, Notice of Non-Compliance.

- (1) Pursuant to Section 455.225(3), F.S., the Department may issue a notice of non-compliance to a licensee for an initial offense of a minor violation. Failure of the person to whom a notice of non-compliance is issued to take corrective action which is set forth in the notice of violation within 15 days of the receipt of the notice may result in further disciplinary action.
- (2) The following violations are minor violations for which the Department may issue a notice of non-compliance:
 - (a) Retention of client records when records are returned within three months of the date requested and there is no evidence that the initial failure to return the records was due to any fees not being paid.
 - (b) Use of “& Associates” in a firm name when the firm does not have a licensee that qualifies as the “associate”.
 - (c) Licensees practicing in a firm which was not licensed within three months of the date the firm began doing business. Any late fees shall still apply.
 - (d) Practicing on a delinquent license for up to three months.
 - (e) Failure to timely complete required CPE if failure is due to erroneous belief that completed CPE satisfied requirements and deficiency has been completed.
 - (f) Failure to notify the Board in writing within 30 days of the occurrence of any of the following:
 1. Admission or addition of a co-partner, shareholder or member in the Florida office;
 2. Retirement or death of a co-partner, shareholder, or member in a Florida office;
 3. Termination of the partnership, professional service corporation or limited liability company of any Florida office.
 - (g) Failure to provide the Board with a list of all co-partners, shareholders or members in the U.S. pursuant to subsection 61H1-26.004(2), F.A.C.

(h) Employment by a CPA firm of any person with a delinquent or inactive license; or, working for a CPA firm with an inactive or delinquent license for one year or less.

(3) The Department shall not issue a notice of non-compliance for any subsequent violations of the same provision of the law or rules to the same licensee, registrant or certificate holder, within a three-year period following the initial notice of non-compliance for violation of that provision.

Specific Authority 455.225(3), 473.304 FS. Law Implemented 455.225, 473.3101 FS. History--New 10-15-97, Amended 7-16-98, 8-16-99.

61H1-36.006 Mediation.

(1) "Mediation" means a process whereby a mediator appointed by the department acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal and nonadversarial process with the objective of assisting the parties to reach a mutually acceptable agreement.

(2) The Board finds that mediation is an acceptable method of dispute resolution for the following violation as it is economic in nature or can be remedied by the licensee: failure of the licensee to timely pay any assessed administrative fines or costs.

(3) A "mediator" means a person who is certified in mediation by the Florida Bar, the Florida Supreme Court, or the Division of Administrative Hearings.

Specific Authority 455.2235 FS. Law Implemented 455.2235 FS. History--New 11-21-94.

CHAPTER 61H1-37 REINSTATEMENT

61H1-37.001 Reinstatement. (Repealed)

CHAPTER 61H1-38 CERTIFIED PUBLIC ACCOUNTANT EDUCATION MINORITY ASSISTANCE PROGRAM

61H1-38.001 Definitions.

61H1-38.002 Fifth year of Accounting Education Program.

61H1-38.003 General Requirements.

61H1-38.004 Eligibility Criteria.

61H1-38.005 Scholarships.

61H1-38.006 Terms for Council Members.

61H1-38.007 Fees.

61H1-38.001 Definitions.

Minority – As used herein, the term "minority" shall have the same meaning as set out in Section 288.703(3), F.S.

Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.

61H1-38.002 Fifth Year of Accounting Education Program.

As used in Section 473.3065(1), a student will be deemed to be enrolled in the "fifth year of accounting education program" so long as the student has completed or is in the final semester of completing a minimum of one hundred and twenty (120) semester hours of academic credit and either is in the process of matriculation in an academic program of higher learning in this state that will result in completion of at least thirty (30) semester hours in excess of that required for a baccalaureate degree or, when the scholarship authorized under Section 473.3065, F.S., will be awarded, has been accepted into and will be enrolled in a different program of higher learning at an approved institution of higher learning in this state that will result in the completion of at least thirty (30) semester hours in excess of that required for a baccalaureate degree. Any program meeting this definition must be configured such that successful completion of the program will qualify a candidate to take the CPA examination on Florida under the provisions of Chapter 473, F.S., and the rules promulgated thereto.

Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.

61H1-38.003 General Requirements.

Approved Institutions – Residency scholarships will only be awarded to students who are Florida residents and who are enrolled in the fifth year of an accounting education program in an institution of higher learning in this state which is accredited by one of the accrediting bodies set forth in Rule 61H1-27.001, F.A.C.

Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.

61H1-38.004 Eligibility Criteria.

A student who meets the foregoing general criteria shall be eligible to be chosen to receive a scholarship so long as the following criteria are met:

- (1) Applicants must demonstrate a financial need which is defined as the cost of attendance at an institution of higher education less the expected family contribution and any gift aid for which the student is entitled. "Cost of attendance" is defined as a Board approved estimate of the expenses incurred by a typical financial aid student attending college. It includes direct educational costs (tuition, supplies, computers) as well as indirect costs (room and board, transportation, laundry, child care and personal expenses). Applicants will be required to authorize the Certified Public Accountant Education Minority Assistance Advisory Council (Council) to verify information submitted including financial assistance and educational costs. It is the intent that scholarship money from this source should not affect a student's eligibility for other scholarships, but should reduce their self-help aid. However, the Council shall take other assistance into consideration when determining a student's eligibility for a scholarship under this section.
 - (2) Applicants must be enrolled as full-time students in a fifth year accounting program as defined in 473.306(2), F.S., at an approved institution as defined in 61H1-27.001, F.A.C., and declared a major in accounting.
 - (3) Applicants must demonstrate scholastic ability of a minimum undergraduate grade point average of 2.5 based on a 4.0 scale.
 - (4) Applicants must be academically in good standing as defined by the college or university.
 - (5) Applicants must be of "good moral character" as that term is defined in Section 473.306(4)(a), F.S.
 - (6) All applications must be postmarked by May 1 of the year to which the scholarship will apply.
- Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.*

61H1-38.005 Scholarships.

- (1) Scholarships will be awarded in the amount of \$3,000.00 per semester up to a maximum of two (2) semesters.
 - (2) Scholarship checks will be made payable jointly to the institution and the student and will be mailed during August for those enrolled in the fall term and during December for those enrolled in the winter term.
 - (3) A maximum of \$100,000.00 may be expended for all scholarships each year.
 - (4) A minimum of \$1,000.00 must be maintained in the program account.
- Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.*

61H1-38.006 Terms for Council Members.

Initial terms will be phased in by appointing two (2) members for a two (2) year term to expire December 31, 2000, and two (2) members to a three (3) year term to expire December 31, 2001. Thereafter all terms will be three (3) years except for the Board Member who shall be appointed annually by the Board Chair.

Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.

61H1-38.007 Fees.

An equal assessment per license out of existing licensing fees, as set forth in Section 473.3065, Florida Statutes, and not to exceed \$10 per license shall be made in an amount needed to collect \$105,000.00 during the first fiscal year of the fund and to collect \$100,000.00 per fiscal year thereafter in order to fund the authorized scholarships.

Specific Authority 473.304(1), 473.3065(3) FS. Law Implemented 473.3065 FS. History--New 9-22-99.

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